(18,515.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 316.

TOLTEC RANCH COMPANY, PLAINTIFF IN ERROR,

vs.

GEORGE COOK, S. N. COOK, ALFRED WARD, GEORGE WARD, G. J. WELLS, C. F. WELLS, JOSEPH DUDLEY, AND CHARLES DUDLEY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF UTAH.

INDEX.

	Original.	Print.
Caption	*a*	1
Transcript from the district court of the first judicial district, Box Elder county	1	1
Complaint	1	1
Demurrer of Cook *et al*	3	2
Demurrer of Dudley	4	3
Order overruling demurrers	5	3
Answer of S. N. Cook	6	3
Alfred Ward	8	5
George J. Wells	10	6
C. F. Wells	12	8
Charles H. Dudley	14	9
Joseph Dudley	16	10
George Ward	18	12
George Cook	20	13
Plaintiff's interrogatories	22	14
Interrogatories submitted to the jury and answers as to S. N. Cook and George Cook	23	15
Verdict as to S. N. Cook and George Cook	24	16

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MARCH 11, 1903.

	Original.	Print
Interrogatories submitted to the jury and answers as to Carson F. Wells and George J. Wells	25	16
Verdict as to G. J. Wells and C. F. Wells	26	16
Interrogatories submitted to the jury and answers as to Jos. Dudley	27	17
Verdict as to Joseph Dudley	28	17
Interrogatories submitted to the jury and answers as to C. H. Dudley	29	18
Verdict as to C. H. Dudley	30	18
Interrogatories submitted to the jury and answers as to Alfred Ward	31	19
Verdict as to Alfred Ward	32	19
Interrogatories submitted to the jury and answers as to Geo. Ward	33	20
Verdict as to George Ward	34	20
Judgment as to Chas. H. Dudley	35	21
Alfred Ward	36	22
Joseph Dudley	37	23
S. N. Cook and Geo. Cook	38	24
Carson F. Wells and Geo. J. Wells	39	25
George Ward	40	26
Clerk's certificate to judgment	41	27
Notice of intention to move for new trial	42	27
Bill of exceptions	43	28
Objections to jury trial, &c.	43	28
Exhibits offered	45	29
Plaintiff rests	45	29
Testimony of J. J. Ward	45	29
John A. Edwards	50	32
Joseph S. Dudley	50	33
Exhibits offered	54	36
Testimony of S. N. Cook	55	36
Lyman B. Wells	56	37
J. J. Ward (recalled)	57	37
Defendants rest	58	38
Motion for judgment for plaintiff	59	38
Instructions of court to jury	60	39
Plaintiff's exceptions as to instructions	64	41
Plaintiff's Exhibit A—Patent No. 107, Central Pacific Railroad lands	68	43
B—Deed, Central Pacific R. R. Co. to D. P. Tarpey, October 17, 1895	70	45
C—Deed, D. P. Tarpey *et ux.* to M. F. Tarpey, December 28, 1895	74	48
D—Deed, M. F. Tarpey *et ux.* to Toltec Ranch Co., October 17, 1896	76	49
Defendants' Exhibit 1—Diagram	78	51
Decree of distribution of estate of George J. Ward	79	51
2—Quitclaim deed, M. Ward *et ux.* to Alfred Ward, April 9, 1896	81	52
3—Quitclaim deed, John D. Jones to Geo. Cook *et al.*, April 8, 1892	82	53

	Original.	Print
Defendants' Exhibit 4—Quitclaim deed, Lyman B. Wells *et al.* to George J. Wells *et al.*, November 23, 1891	83	53
5—Quitclaim deed, Richard T. Ward to George Ward, April 30, 1885	84	54
Notice of intention to move for new trial	85	55
Order denying motion for new trial	86	56
Order granting time to prepare bill of exceptions	87	56
Service of proposed bill of exceptions	88	56
Judge's certificate to bill of exceptions	88	56
Notice of appeal	89	57
Clerk's certificate to record	90	57
Petition in error	91	58
Submission	94	59
Judgment	94	59
Opinion	95	60
Petition for writ of error	98	61
Order allowing writ of error	100	62
Writ of error	101	62
Citation	102	64
Assignment of errors	103	64
Bond on writ of error	105	65
Clerk's certificate	107	67

5540

a In the Supreme Court of the State of Utah.

TOLTEC RANCH COMPANY, a Corporation, Appellant,
vs.
GEORGE COOK ET AL., Respondents.

Filed in supreme court of the State of Utah January 18, 1902.
L. P. PALMER, *Clerk*,
By H. W. GRIFFITH, *Deputy*.

1 In the District Court of the First Judicial District, Box Elder County, State of Utah.

TOLTEC RANCH COMPANY, a Corporation, Plaintiff,
v.
GEORGE COOK, S. N. COOK, ALFRED WARD, GEORGE WARD, G. J. WELLS, C. F. WELLS, JOSEPH DUDLEY, and CHARLES DUDLEY, Defendants. } Complaint.

Plaintiff complains and alleges:

That it is now and at all the times hereinafter alleged was a corporation organized and existing under and by virtue of the laws of the State of California.

2. That the said plaintiff is now and for a long time has been the owner in fee and entitled to the possession of all that certain real estate situate in Box Elder county, State of Utah, and particularly described as follows: The southeast quarter of the southeast quarter of section twenty-seven (27), township eight (8), north range two west Salt Lake meridian, U. S. survey.

3. That the said plaintiff claims title in fee to the said premises and that the said defendants claim an estate or interest therein adverse to plaintiff.

4. That the claims of the said defendants and each of them are without any right whatever, and that the said defendants or either of *of* them have not any estate, right, title or interest whatever in said lands or premises, or any part thereof.

Wherefore plaintiff prays judgment:

1. That the defendants and each of them may be required to set forth the nature of their claims, and that all adverse claims of the defendants may be determined by a decree of this court.

2 2. That by said decree it be declared and adjudged that the defendants and each of them have no estate or interest whatever in or to said land and premises, and that the title of plaintiff is good and valid.

3. That the defendants and each of them be forever enjoined and debarred from asserting any claim whatever in or to said lands or premises adverse to plaintiff, and for such other and further relief as to the court may seem meet and equitable, and for costs of suit.

JOHNSON & CHASE,
Attorneys for Plaintiff.

STATE OF UTAH, } ss:
County of Box Elder, }

E. R. Chase being first duly sworn deposes and says: That he is attorney and agent for the plaintiff herein, and makes this verification for the reason that the said plaintiff, and each of its officers are absent from the county in which its said attorney and agent resides; that he has read the foregoing complaint and knows the contents thereof, and the same is true of his own knowledge.

EDWARD R. CHASE.

Subscribed and sworn to before me this the 31st day of January, 1901.

GEORGE R. CHASE,
Notary Public.

[SEAL.]

My commission expires June 23, 1903.

3 In the District Court of the First Judicial District of the State of Utah, County of Box Elder.

TOLTEC RANCH COMPANY a Corporation, Plaintiff,
vs.
GEORGE COOK ET AL., Defendants. } Demurrer.

Demurrer of defendants George Cook, S. N. Cook, Alfred Ward, George Ward, G. J. Wells and C. F. Wells, alleges:

That the court has no jurisdiction of the person of defendants, or the subject-matter of the action.

That there is a misjoinder of parties defendant in this, that George Cook, S. N. Cook, Alfred Ward, George Ward, G. J. Wells and C. F. Wells have no interest whatever in common with each other, and they should not be joined in this proceeding.

That several causes of action have been improperly united, that is, a separate cause of action against each of the defendants is joined in one.

That the complaint does not state facts sufficient to constitute a cause of action.

B. H. JONES.
Attorney for George Cook, S. N. Cook, Alfred Ward, George Ward, G. J. Wells, and F. C. Wells.

Service of a copy of the within demurrer is admitted this 15th day of February, 1901.

JOHNSON AND CHASE.

4 In the District Court of the First Judicial District of the State of Utah, County of Box Elder.

TOLTEC RANCH COMPANY, a Corporation, Plaintiff,
vs.
GEORGE COOK, S. N. COOK, ALFRED WARD, GEORGE WARD, G. W. Wells, C. F. Wells, Joseph Dudley, *et al.*, Defendants.

Separate Demurrer of Joseph Dudley.

Now comes Joseph Dudley, one of the defendants in the above-entitled action, and files his separate demurrer to plaintiff's complaint, and sets up the following grounds to wit:

1st. That there is a misjoinder of parties defendant in this: that each of said defendants is improperly united in said action with this defendant, and that this defendant is improperly united as a party with each of said defendants.

2nd. That the said complaint does not state facts sufficient to constitute a cause of action.

3rd. That the complaint is ambiguous, unintelligible and uncertain in this—that it does not appear that the said defendants jointly claim an interest in the whole of said property or severally claim a whole interest in any part of said forty acres.

RICY H. JONES,
Attorney for Defendant Joseph Dudley.

5 Minute-book entry No. 2, page 4, February term, 1901.

THURSDAY, *the 25th day of April*, 1901.

TOLTEC RANCH COMPANY
vs.
GEO. N. COOK ET AL. } # 406.

On this day came on for hearing defendants' motions and demurrers to plaintiff's complaint; T. D. Johnson, Esq., appearing for plaintiff and Ricy H. Jones and B. H. Jones, Esq., appearing for defendants. After hearing arguments of counsel for respective parties, court ordered that motions be, and the same are hereby denied, and demurrers be and the same are hereby overruled.

6 In the District Court of the First Judicial District of the State of Utah, County of Box Elder.

TOLTEC RANCH COMPANY, a Corporation, Plaintiff,
vs.
GEORGE COOK ET AL., Defendants.

Now comes S. N. Cook, one of the above defendants, and files this his separate answer to plaintiff's complaint filed herein, and alleges:

1st. For a special defense this defendant alleges that there is a misjoinder of parties defendant in said complaint in this: that this defendant is improperly joined with the other defendants as to the specific tract of land hereinafter claimed and described by him, because the other defendants neither have nor claim any interest in said tract; that the other defendants are improperly joined with this defendant as to the remainder of the land described in said complaint to which this defendant sets up no title or interest, but disclaims.

2nd. Admits the corporate existence of the plaintiff company.

3rd. Denies that the plaintiff is or ever has been the owner in fee, or entitled to that portion of the land described in the complaint which is claimed by this defendant, and which is hereinafter described by metes and bounds, and disclaims any interest or estate in the remainder of the tract described in said complaint.

4th. Denies that this defendant claims any interest or estate adverse to plaintiff or to any person in any portion of the land described in said complaint except as to that special tract hereinafter described and claimed by this defendant.

5th. That for a separate defense this defendant alleges that he and his grantors and predecessors have claimed, possessed and owned the following portion of the land described in plaintiff's complaint for more than thirty years peaceably, continuously and adversely to the plaintiff, and the world, and is now the owner thereof and seized thereto, to wit:

Commencing at the N. W. corner of the S. E. quarter of the S. E. quarter of sec. 27, T. 8 *M.*, R. 2. W.; thence E. 3.94 chains thence *L.* 33 deg. 37′ E. 1.05 chains; thence N. 89′ W. 4.56 chains; thence N. 83 *L.* to point of beginning, containing 36/100 acres. That this defendant and those under whom he claims have made lasting and valuable improvements on said land by plowing, clearing, cultivating and fencing, and otherwise improving the same to the permanent enhancement of the value thereof in the sum of $—

6th. That plaintiff's cause of action so far as defendant'- interest and estate and claim in land is concerned is barred by the statute of limitations as provided by section- 2856 to 2872 inclusive of the Revised Statutes of Utah.

7 Wherefore defendant prays a decree awarding to him the said lands described above as the owner thereof, and for such other and further relief as may be just, and for costs of suit.

B. H. JONES AND
RICY H. JONES,
Attorneys for Defendants.

STATE OF UTAH, }
County of Box Elder, } *ss:*

S. N. Cook being first duly sworn deposes: That he is one of the defendants in the above-entitled action who files the foregoing separate answer; that he has heard read the said answer, and knows he contents thereof; that the same is true of his own knowledge,

except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

S. N. COOK.

Subscribed and sworn to before me this 23rd day of March, 1901.

RICY H. JONES,
Notary Public.

8 In the District Court of the First Judicial District of the State of Utah, County of Box Elder.

TOLTEC RANCH COMPANY, a Corporation, Plaintiff,
vs.
GEORGE COOK ET AL., Defendants.

Now comes Alfred Ward, one of the above defendants, and files this his separate answer to plaintiff's complaint filed herein, and alleges:

1st. For a special defense this defendant alleges that there is a misjoinder of parties defendant in said complaint in this: that this defendant is improperly joined with the other defendants as to the specifiec tract of land hereinafter claimed and described by him, because the other defendants neither have nor claim any interest in said tract; that the other defendants are improperly joined with this defendant as to the remainder of the land described in said complaint to which this defendant sets up no title or interest, but disclaims.

2nd. Admits the corporate existence of the plaintiff company.

3rd. Denies that the plaintiff is or ever has been the owner in fee, or entitled to that portion of the land described in the complaint which is claimed by this defendant, and which is hereinafter described by metes and bounds, and disclaims any interest or estate in the remainder of the tract described in said complaint.

4th. Denies that this defendant claims any interest or estate adverse to plaintiff or to any person in any portion of the land described in said complaint except as to that special tract hereinafter described and claimed by this defendant.

5th. That for a separate defense this defendant alleges that he and his grantors and predecessors have claimed, possessed and owned the following portion of the land described in plaintiff's complaint for more than thirty years peaceably, continuously and adversely to the plaintiff, and the world, and is now the owner thereof and seized thereto, to wit: Commencing 13.66 chns. north of the S. E. cor. of section 27, T. 8, R. 2 W., thence N. 89 deg. 19″ W., 10.06 chns.; thence N. 33′ 37″ W. 6.40 chns.; thence *L.* 89′ E. 13.60 chns.; thence S. 5.21 chns. to beginning, containing 6.12 acres exclusive of the railway claim. That this defendant and those under whom he claims have made lasting and valuable improvements on said land by plowing, clearing, cultivating and fencing,

and otherwise improving the same to the permanent enhancement of the value thereof in the sum of $—

6th. That plaintiff's cause of action so far as defendant'- interest and estate and claim in land is concerned is barred by the statute of limitations as provided by section- 2856 to 2872 inclusive of the Revised Statutes of Utah.

9 Wherefore defendant prays a decree awarding to him the said lands described above as the owner thereof, and for such other and further relief as may be just, and for costs of suit.

B. H. JONES AND
RICY H. JONES,
Attorneys for Defendants.

STATE OF UTAH, }
County of Box Elder, } ss:

Alfred Ward, being first duly sworn says that he is the defendant above named; that he has heard read the foregoing complaint, and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, as to those matters that he believes it to be true.

ALFRED WARD.

Subscribed and sworn to before me this 22nd day of March, 1901.

[SEAL.] RICY H. JONES,
Notary Public.

10 In the District Court of the First Judicial District of the State of Utah, County of Box Elder.

TOLTEC RANCH COMPANY, a Corporation, Plaintiff, }
vs. }
GEORGE COOK ET AL., Defendants. }

Now comes Geo. J. Wells, one of the above defendants, and files this his separate answer to plaintiff's complaint filed herein, and alleges:

1st. For a special defense this defendant alleges that there is a misjoinder of parties defendant in said complaint in this: that this defendant is improperly joined with the other defendants as to the specifiec tract of land hereinafter claimed and described by him, because the other defendants neither have nor claim any interest in said tract; that the other defendants are improperly joined with this defendant as to the remainder of the land described in said complaint to which this defendant sets up no title or interest, but disclaims.

2nd. Admits the corporate existence of the plaintiff company.

3rd. Denies that the plaintiff is or ever has been the owner in fee, or entitled to that portion of the land described in the complaint which is claimed by this defendant, and which is hereinafter described by metes and bounds, and disclaims any interest

or estate in the remainder of the tract described in said complaint.

4th. Denies that this defendant claims any interest or estate adverse to plaintiff or to any person in any portion of the land described in said complaint except as to that special tract hereinafter described and claimed by this defendant.

5th. That for a separate defense this defendant alleges that he and his grantors and predecessors have claimed, possessed and owned the following portion of the land described in plaintiff's complaint for more than thirty years peaceably, continuously and adversely to the plaintiff, and the world, and is now the owner thereof and seized thereto, to wit: Commencing 10.22 chains N. of the S. E. corner of sec. 27, T. 8 *M.*, R. 2 W.; thence N. 89′ 29″ W. 20 chains; thence N. 1.75 chns. thence *L.* 89′ 24″ E. 20 chns.; thence S. 1.72 chns. to point of beginning, containing 3.16 acres exclusive of the railway claim. That this defendant and those under whom he claims have made lasting and valuable improvements on said land by plowing, clearing, cultivating and fencing, and otherwise improving the same to the permanent enhancement of the value thereof in the sum of $—.

6th. That plaintiff's cause of action so far as defendant'- interest and estate and claim in land is concerned is barred by the statute of limitations as provided by section- 2856 to 2872 inclusive of the Revised Statutes of Utah.

11 Wherefore defendant prays a decree awarding to him the said lands described above as the owner thereof, and for such other and further relief as may be just, and for costs of suit.

B. H. JONES AND
RICY H. JONES,
Attorneys for Defendants.

STATE OF UTAH, }
County of Box Elder. } *ss:*

Geo. J. Wells, being first duly sworn says that he is the defendant above named, and makes this verification on his own account; affiant further says that he has heard read the foregoing complaint and knows the contents thereof and that the same is true of his own knowledge, except as to those matters stated on information and belief, and as to those matters that he believes it to be true.

GEO. J. WELLS.

Subscribed and sworn to before me this 22nd day of March, 1901.

B. H. JONES,
Notary Public.

12 In the District Court of the First Judicial District of the State of Utah, County of Box Elder.

TOLTEC RANCH COMPANY, a Corporation, Plaintiff,
vs.
GEORGE COOK ET AL., Defendants.

Now comes C. F. Wells one of the above defendants, and files this his separate answer to plaintiff's complaint filed herein, and alleges:

1st. For a special defense this defendant alleges that there is a misjoinder of parties defendant in said complaint in this: that this defendant is improperly joined with the other defendants as to the specific tract of land hereinafter claimed and described by him, because the other defendants neither have nor claim any interest in said tract; that the other defendants are improperly joined with this defendant as to the remainder of the land described in said complaint to which this defendant sets up no title or interest, but disclaims.

2nd. Admits the corporate existence of the plaintiff company.

3rd. Denies that the plaintiff is or ever has been the owner in fee, or entitled to that portion of the land described in the complaint which is claimed by this defendant, and which is hereinafter described by metes and bounds, and disclaims any interest or estate in the remainder of the tract described in said complaint.

4th. Denies that this defendant claims any interest or estate adverse to plaintiff or to any person in any portion of the land described in said complaint except as to that special tract hereinafter described and claimed by this defendant.

5th. That for a separate defense this defendant alleges that he and his grantors and predecessors have claimed, possessed and owned the following portion of the land described in plaintiff's complaint for more than thirty years peaceably, continuously and adversely to the plaintiff, and the world, and is now the owner thereof and seized thereto, to wit: Commencing 11.94 chns. N. of the S. E. corner of sec. 27, T. 8 *M.* R. 2 W.; thence *M.* 89 deg. 24″ W. 20 chns.; thence N 1.72 chns.; thence *L.* 89′ E. 20 chns.; thence S. 1.72 chns. to point of beginning containing 3.16 acres exclusive of the railway claim. That this defendant and those under whom he claims have made lasting and valuable improvements on said land by plowing, clearing, cultivating and fencing, and otherwise improving the same to the permanent enhancement of the value thereof in the sum of $—

6th. That plaintiff's cause of action so far as defendant'- interest and estate and claim in land is concerned is barred by the statute of limitations as provided by section- 2856 to 2872 inclusive of the Revised Statutes of Utah.

13 Wherefore defendant prays a decree awarding to him the said lands described as above as the owner thereof, and for such other and further relief, as may be just, and for costs of suit.

B. H. JONES AND
RICY H. JONES,
Attorneys for Defendants.

STATE OF UTAH, } ss:
County of Box Elder, }

Carson F. Wells being first duly sworn says that he is the defendant above named, that he has heard read the foregoing complaint, and knows the contents thereof, and that the same is true of his own knowledge except as to those matters therein stated on information and belief; as to those matters that he believes it to be true.

C. F. WELLS.

Subscribed and sworn to before me this 22nd day of March 1901.

B. H. JONES,
Notary Public.

Service of copies of the answers of Geo. Ward, S. N. Cook, Carson F. Wells, Jos. Dudley, Geo. J. Wells, Alfred Ward and Charles H. Dudley, Geo. Cook is hereby acknowledged.

March 29, 1901.

JOHNSON AND CHASE,
Attorneys for Plaintiff.

14 In the District Court of the First Judicial District of the State of Utah, County of Box Elder.

TOLTEC RANCH COMPANY, a Corporation, Plaintiff,
vs.
GEORGE COOK ET AL., Defendants.

Now comes Chas. H. Dudley, one of the above defendants, and files this his separate answer to plaintiff's complaint filed herein, and alleges:

1st. For a special defense this defendant alleges that there is a misjoinder of parties defendant in said complaint in this: that this defendant is improperly joined with the other defendants as to the specifiec tract of land hereinafter claimed and described by him, because the other defendants neither have nor claim any interest in said tract; that the other defendants are improperly joined with this defendant as to the remainder of the land described in said complaint to which this defendant sets up no title or interest, but disclaims.

2nd. Admits the corporate existence of the plaintiff company.

3rd. Denies that the plaintiff is or ever has been the owner in fee, or entitled to that portion of the land described in the complaint which is claimed by this defendant, and which is hereinafter described by metes and bounds, and disclaims any interest or estate in the remainder of the tract described in said complaint.

4th. Denies that this defendant claims any interest or estate adverse to plaintiff or to any person in any portion of the land described in said complaint except as to that special tract hereinafter described and claimed by this defendant.

5. That for a separate defence this defendant alleges that he and

his grantors and predecessors have claimed, possessed and owned the following portion of the land described in plaintiff's complaint for more than thirty years peaceably, continuously and adversely to the plaintiff, and the world, and is now the owner thereof and seized thereto, to wit:

Commencing at the S. E. cor. of sec. 27, T. 8 N. R. 2 W.; thence west 20 chains, thence N. 3 chains; thence *L.* 89′ 31″ E. 20 chns. thence S. 2.83 chns. to place of beginning, containing 5.28 acres exclusive of the railway claim.

That this defendant and those under whom he claims have made lasting and valuable improvements on said land by plowing, clearing, cultivating and fencing, and otherwise improving the same to the permanent enhancement of the value thereof in the sum of $—

6th. That plaintiff's cause of action so far as defendant'- interest and estate and claim in land is concerned is barred by the statute of limitations as provided by section- 2856 to 2872 inclusive of the Revised Statutes of Utah.

15 Wherefore defendant prays a decree awarding to him the said lands described above as the owner thereof, and for such other and further relief as may be just, and for costs of suit.

B. H. JONES AND
RICY H. JONES,
Attorneys for Defendants.

STATE OF UTAH, }
County of Box Elder, } *ss:*

Jos. S. Dudley being first duly sworn says that he is onw of the defendants above named, and makes this verification for his brother C. H. Dudley; that he has heard read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, as to those matters that he believes it to be true.

JOSEPH S. DUDLEY,
For C. H. Dudley.

Subscribed and sworn to before me this 22nd day of March.

RICY H. JONES,
Notary Public.

16 In the District Court of the First Judicial District of the State of Utah, County of Box Elder.

TOLTEC RANCH COMPANY, a Corporation, Plaintiff, }
vs.
GEORGE COOK ET AL., Defendants. }

Now comes Jos. Dudley, one of the above defendants, and files this his separate answer to plaintiff's complaint filed herein, and alleges:

1st. For a special defense this defendant alleges that there is a misjoinder of parties defendant in said complaint in this: that this

defendant is improperly joined with the other defendants as to the specific tract of land hereinafter claimed and described by him, because the other defendants neither have nor claim any interest in said tract; that the other defendants are improperly joined with this defendant as to the remainder of the land described in said complaint to which this defendant sets up no title or interest, but disclaims.

2nd. Admits the corporate existence of the plaintiff company.

3rd. Denies that the plaintiff is or ever has been the owner in fee, or entitled to that portion of the land described in the complaint which is claimed by this defendant, and which is hereinafter described by metes and bounds, and disclaims any interest or estate in the remainder of the tract described in said complaint.

4th. Denies that this defendant claims any interest or estate adverse to plaintiff or to any person in any portion of the land described in said complaint except as to that special tract hereinafter described and claimed by this defendant.

5th. That for a separate defense this defendant alleges that he and his grantors and predecessors have claimed, possessed and owned the following portion of the land described in plaintiff's complaint for more than thirty years peaceably, continuously and adversely to the plaintiff, and the world, and is now the owner thereof and seized thereto, to wit:

Commencing 2.83 chns. N. of the S. E. corner of sec. 27, T. 8 *M.* R. 2 W.: thence N. 89′, 31″ W. 20 chns.; thence N. 30′ 90 chns.; thence *L.* 89′, 29″ E. 20 chns.; thence S. 3.89 chns. to point of beginning, containing 7.09 acres exclusive of the railway claim.

That this defendant and those under whom he claims have made lasting and valuable improvements on said land by plowing, clearing, cultivating and fencing, and otherwise improving the same to the permanent enhancement of the value thereof in the sum of $—

6th. That plaintiff's cause of action so far as defendant'- interest and estate and claim in land is concerned is barred by the statute of limitations as provided by section- 2856 to 2872 inclusive of the Revised Statutes of Utah.

17 Wherefore defendant prays a decree awarding to him the said lands described above as the owner thereof, and for such other and further relief as may be just, and for costs of case.

B. H. JONES AND
RICY H. JONES,
Attorneys for Defendants.

STATE OF UTAH, }
County of Box Elder, } ss:

Joseph S. Dudley, being first duly sworn says that he is the defendant above named; that he has heard read the foregoing complaint, and knows the contents thereof, and that the same is true of his own knowledge except as to those matters stated on information and belief, as to those matters he believes it to be true.

JOSEPH S. DUDLEY.

Subscribed and sworn to before me this 22nd day of March 1901.
[SEAL.] B. H. JONES,
Notary Public.

18 In the District Court of the First Judicial District of the State of Utah, County of Box Elder.

TOLTEC RANCH COMPANY, a Corporation, Plaintiff,
vs.
GEORGE COOK ET AL., Defendants.

Now comes Geo. Ward, one of the above defendants, and files this his separate answer to plaintiff's complaint filed herein, and alleges:

1st. For a special defense this defendant alleges that there is a misjoinder of parties defendant in said complaint in this: that this defendant is improperly joined with the other defendants as to the specific tract of land hereinafter claimed and described by him, because the other defendants neither have nor claim any interest in said tract; that the other defendants are improperly joined with this defendant as to the remainder of the land described in said complaint to which this defendant sets up no title or interest, but disclaims.

2nd. Admits the corporate existence of the plaintiff company.

3rd. Denies that the plaintiff is or ever has been the owner in fee, or entitled to that portion of the land described in the complaint which is claimed by this defendant, and which is hereinafter described by metes and bounds, and disclaims any interest or estate in the remainder of the tract described in said complaint.

4th. Denies that this defendant claims any interest or estate adverse to plaintiff or to any person in any portion of the land described in said complaint except as to that special tract hereinafter described and claimed by this defendant.

5th. That for a separate defense this defendant alleges that he and his grantors and predecessors have claimed, possessed and owned the following portion of the land described in plaintiff's complaint for more than thirty years peaceably, continuously and adversely to the plaintiff, and the world, and is now the owner thereof and seized thereto, to wit: Commencing 13.90 chns. N. of the S. W. cor. of the S. E. quarter of the S. E. quarter of sec. 27, T. 8 *M.* R. 2 W.; thence N. 5.33 chns.; thence *L.* 89′ E. 4.56 chns.; thence *L.* 33′ 37″ E. 6.40 chns. N. 89′ W. 8.06 chns. to point of beginning containing 3.32 acres. That this defendant and those under whom he claims have made lasting and valuable improvements on said land by plowing, clearing, cultivating and fencing, and otherwise improving the same to the permanent enhancement of the value thereof in the sum of $—.

6th. That plaintiff's cause of action so far as defendant'- interest and estate and claim in land is concerned is barred by the statute of limitations as provided by section- 2856 to 2872 inclusive of the Revised Statutes of Utah.

19 Wherefore defendant prays a decree awarding to him the said lands described above as the owner thereof, and foe such other and further relief as may be just, and for costs of suit.

B. H. JONES AND
RICY H. JONES.
Attorneys for Defendants.

STATE OF UTAH, }
County of Box Elder, } *ss:*

B. H. Jones being first duly sworn says that he is the attorney for the defendant above named and makes this verification on account of the absence of the defendant from Box Elder county, where affiant resides; affiant further says that he has heard read the foregoing complaint and knows the contents thereof, and that the same is true of his own knnowledge except as to those matters stated on information and belief as to those matters that he believes it to be true.

B. H. JONES,

Subscribed and sworn to before me this 22nd day of March, 1901.
[SEAL.] RICY H. JONES,
Notary Public.

20 In the District Court of the First Judicial District of the State Utah, County of Box Elder.

TOLTEC RANCH COMPANY, a Corporation, Plaintiff, }
vs.
GEORGE COOK ET AL., Defendants. }

Now comes George Cook, one of the above defendants, and files this his separate answer to plaintiff's complaint filed herein, and alleges:

1st. For a special defense this defendant alleges that there is a misjoinder of parties defendant in said complaint in this: that this defendant is improperly joined with the other defendants as to the specifiec tract of land hereinafter claimed and described by him, because the other defendants neither have nor claim any interest in said tract; that the other defendants are improperly joined with this defendant as to the remainder of the land described in said complaint to which this defendant sets up no title or interest, but disclaims.

2nd. Admits the corporate existence of the plaintiff company.

3rd. Denies that the plaintiff is or ever has been the owner in fee, or entitled to that portion of the land described in the complaint which is claimed by this defendant, and which is hereinafter described by metes and bounds, and disclaims any interest or estate in the remainder of the tract described in said complaint.

4th. Denies that this defendant claims any interest or estate adverse to plaintiff or to any person in any portion of the land described in said complaint except as to that special tract hereinafter described and claimed by this defendant.

5th. That for a separate defense this defendant alleges that he and his grantors and predecessors have claimed, possessed and owned the following portion of the land described in plaintiff's complaint for more than thirty years peaceably, continuously and adversely to the plaintiff, and the world, and is now the owner thereof and seized thereto, to wit: Commencing at the N. E. cor. of the S. E. quarter of the S. E. quarter of sec. 27, T. 8 *M.*, R. 2 W.: thence S. 1.19 chns.; thence *M.* 89′ W. 13.60 chns.; thence *M.* 33′ 37″ W. — chns.; thence E. 14.20 chns. to point of beginning, containing 1.37 acres of the railway claim. That this defendant and those under whom he claims have made lasting and valuable improvements on said land by plowing, clearing, cultivating and fencing, and otherwise improving the same to the permanent enhancement of the value thereof in the sum of $—

6th. That plaintiff's cause of action so far as defendant'- interest and estate and claim in land is concerned is barred by the statute of limitations as provided by section- 2856 to 2872 inclusive of the Revised Statutes of Utah.

21 Wherefore defendant prays a decree awarding to him the said lands described above as the owner thereof, and for such other and further relief as may be just, and for costs of suit.

B. H. JONES AND
RICY H. JONES,
Attorneys for Defendants.

STATE OF UTAH, }
County of Box Elder, } ss:

B. H. Jones being first duly — deposes and says: That he is one of the attorneys for the defendant in the above-entitled action, and makes this verification on his behalf for the reason that said defendant is absent from Brigham City and the facts are within affiant's knowledge; that affiant has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge except as to those matters stated on his information and belief and as to those matters that he believes it to be true.

B. H. JONES.

Subscribed and sworn to before me this 29th day of March, 1901.
[SEAL.]
RICY H. JONES,
Notary Public.

22 In the District Court, 1st Judicial District, Box Elder County, State of Utah.

TOLTEC RANCH COMPANY, Plaintiff,
vs.
GEORGE COOK ET AL., Defendants. } Plaintiff's Interrogatories.

1. When was the land in dispute and described in the complaint surveyed.

2. When did the defendant George Cook first claim title to the land set out in his answer.

3. When did S. N. Cook first claim title to the land set out in his answer.
4. When did Alfred Ward first claim title to the land set out in his answer.
5. When did George Ward first claim title to the land described in his answer.
6. When did G. J. Wells first claim title to the land described in his answer.
7. When did C. F. Wells first claim title to the land described in his answer.
8. When did Joseph Dudley first claim title to the land described in his answer.
9. When did Charles Dudley first claim title to the land described in his answer.
10. What if anything was the claim of right under which and upon which the defendants base their several claims.
11. Who has paid the taxes legally assessed upon the lands in dispute and for what years.

Refused except as otherwise covered in interrogatories.

HART, *J.*

23 In the District Court of the First Judicial District of Utah in and for Box Elder County.

TOLTEC RANCH COMPANY, a Corporation, Plaintiff,
vs.
GEORGE COOK ET AL., Defendants.

Interrogatories Submitted to Jury.

Have the defendants S. N. Cook and George Cook been in the open, actual, continuous, notorious, exclusive and hostile possession of the tract described in *his* answer?

Answer. Yes.

If so, during what time?

Answer. From April 4th, 1882, till the present time.

Under what claim of right, if any, has the said defendants claimed the said land?

Answer. By purchase.

If claimed, for what period have they claimed in their own right?

Answer. Ever since April 4, 1882.

For what period have their predecessor or grantors claimed it?

Answer. From October 20th, 1868 till April 4, 1882.

Who has paid the taxes upon the premises described in the complaint, and for what years?

Answer. Partly defendants, and partly plaintiff. Jury do not know what years.

JOHN BURROWS, *Foreman.*

24 In the District Court of the First Judicial District, County of Box Elder, State of Utah.

TOLTEC RANCH COMPANY, a Corporation, Plaintiff,
—
S. N. COOK and GEORGE COOK, Defendants. } Verdict.

We, the jury empanneled in the above-entitled cause, find the issues joined herein in favor of the said defendants and against the plaintiff, no cause of action.

JOHN BURROWS, *Foreman.*

Dated May 18, 1901.

25 In the District Court of the First Judicial District of Utah in and for Box Elder County.

TOLTEC RANCH COMPANY, a Corporation, Plaintiff,
vs.
GEORGE COOK ET AL., Defendants.

Interrogatories Submitted to Jury.

Have the defendants Carson F. Wells and George J. Wells been in the open, actual, continuous, notorious, exclusive and hostile possession of the tract described in *his* answer?

Answer. Yes.

If so, during what time?

Answer. From November 23, 1891, till the present time.

Under what claim of right, if any, *has* the said defendants claimed the said land?

Answer. By purchase.

If claimed, for what period have they claimed in their own right?

Answer. From Nov. 23rd, 1891, till the present.

For what period have their predecessor or grantors claimed it?

Answer. From October 20, 1868 to Nov. 23rd, 1891.

Who has paid the taxes upon the premises described in the complaint, and for what years?

Answer. Partly defendants, and partly plaintiff. Jury do not know what years.

JOHN BURROWS, *Foreman.*

26 In the District Court of the First Judicial District, County of Box Elder, State of Utah.

TOLTEC RANCH COMPANY, a Corporation, Plaintiff,
—
G. J. WELLS and C. F. WELLS, Defendants. } Verdict.

We, the jury empanneled in the above-entitled cause find the issues joined herein in favor of the said defendants and against the plaintiff, no cause of action.

JOHN BURROWS, *Foreman.*

Dated May 18, 1901.

27 In the District Court of the First Judicial District of Utah in and for Box Elder County.

TOLTEC RANCH COMPANY, a Corporation, Plaintiff,
vs.
GEORGE COOK ET AL., Defendants.

Interrogatories Submitted to Jury.

Has the defendant Joseph Dudley been in the open, actual, continuous, notorious, exclusive and hostile possession of the tract described in his answer?

Answer. Yes.

If so, during what time?

Answer. From October 20, 1868 till the present.

Under what claim of right, if any, has the said defendants claimed the said land?

Answer. Inheritance—deed destroyed by fire.

If claimed, for what period *have they* claimed in *their* own right?

Answer. From the date of his lost deed till the present time.

For what period has his predecessor or grantors claimed it?

Answer. From Oct. 20, 1868 till deed was given.

Who has paid the taxes upon the premises described in the complaint, and for what years?

Answer. Partly defendants, and partly plaintiff. Jury do not know what years.

JOHN BURROWS, *Foreman.*

28 In the District Court of the First Judicial District, County of Box Elder, State of Utah.

TOLTEC RANCH COMPANY, a Corporation, Plaintiff,
—
JOSEPH DUDELY, Defendants.
} Verdict.

We, the jury empanneled in the above-entitled cause find the issues joined herein in favor of the said defendants and against the plaintiff, no cause of action.

JOHN BURROWS, *Foreman.*

Dated May 18, 1901.

29 In the District Court of the First Judicial District of Utah in and for Box Elder County.

TOLTEC RANCH COMPANY, a Corporation, Plaintiff,
vs.
GEORGE COOK ET AL., Defendants.

Interrogatories Submitted to Jury.

Has the defendant Charles H. Dudley been in the open, actual, continuous, notorious, exclusive and hostile possession of the tract described in his answer?

Answer. Yes.

If so, during what time?

Answer. From October 20, 1868, to the present time.

Under what claim of right, if any, has the said defendants claimed the said land?

Answer. Inheritance deed destroyed by fire.

If claimed, for what period *have they* claimed in *their* own right?

Answer. From 1868 till the present time.

For what period *have their* predecessors or grantors claimed it?

Answer. From Oct. 28th, 1868 till deed was given.

Who has paid the taxes upon the premises described in the complaint, and for what years?

Answer. Partly defendants, and partly plaintiff. Jury do not know what years.

JOHN BURROWS, *Foreman.*

30 In the District Court of the First Judicial District, County of Box Elder, State of Utah.

TOLTEC RANCH COMPANY, a Corporation, Plaintiff,
—
CHARLES H. DUDLEY, Defendants.
} Verdict.

We, the jury empanneled in the above-entitled cause find the issues joined herein in favor of the said defendants and against the plaintiff, no cause of action.

JOHN BURROWS, *Foreman.*

Dated May 18, 1901.

31 In the District Court of the First Judicial District of Utah in and for Box Elder County.

TOLTEC RANCH COMPANY, a Corporation, Plaintiff,
vs.
GEORGE COOK ET AL., Defendants.

Interrogatories Submitted to Jury.

Has the defendant Alfred Ward been in the open, actual, continuous, notorious, exclusive and hostile possession of the tract described in his answer?

Answer. Yes.

If so, during what time?

Answer. From April 9th, 1896, till the present time.

Under what claim of right, if any, has the said defendants claimed the said land?

Answer. By purchase.

If claimed, for what period *have they* claimed in *their* own right?

Answer. From April 9th, 1896, till the present.

For what period *have their* predecessor or grantors claimed it?

Answer. From October 20, 1868, till April 9, 1896.

Who has paid the taxes upon the premises described in the complaint, and for what years?

Answer. Partly defendants, and partly plaintiff. Jury do not know what years.

JOHN BURROWS, *Foreman.*

32 In the District Court of the First Judicial District, County of Box Elder, State of Utah.

TOLTEC RANCH COMPANY, a Corporation, Plaintiff,
—
ALFRED WARD, Defendant.
} Verdict.

We, the jury empanneled in the above-entitled cause find the issues joined herein in favor of the said defendant and against the plaintiff, no cause of action.

JOHN BURROWS, *Foreman.*

Dated May 18, 1901.

33 In the District Court of the First Judicial District of Utah in and for Box Elder County.

TOLTEC RANCH COMPANY, a Corporation, Plaintiff,
vs.
GEORGE COOK ET AL., Defendants.

Interrogatories Submitted to Jury.

Has the defendant George Ward been in the open, actual, continuous, notorious, exclusive and hostile possession of the tract described in his answer?

Answer. Yes.

If so, during what time?

Answer. From April 20th 1885 till the present time.

Under what claim of right, if any, has the said defendants claimed the said land?

Answer. By purchase.

If claimed, for what period *have they* claimed in *their* own right?

Answer. From April 30, 1885 till the present time.

For what period *have their* predecessor or grantors claimed it?

Answer. From Oct. 20, 1868, till April 30, 1885.

Who has paid the taxes upon the premises described in the complaint, and for what years?

Answer. Partly defendants, and partly plaintiff. Jury do not know what years.

JOHN BURROWS, *Foreman.*

34 In the District Court of the First Judicial District, County of Box Elder, State of Utah.

TOLTEC RANCH COMPANY, a Corporation, Plaintiff,
—
GEORGE WARD, Defendants.
} Verdict.

We, the jury empanneled in the above-entitled cause find the issues joined herein in favor of the said defendants and against the plaintiff, no cause of action.

JOHN BURROWS, *Foreman.*

Dated May 18, 1901.

35 In the District Court of the First Judicial District, County of Box Elder, State of Utah—Hon. Chas. H. Hart, Judge.

TOLTEC RANCH COMPANY, a Corporation, Plaintiff,
vs.
GEORGE COOK ET AL., Defendants.

Judgment on Verdict in Open Court 18th Day of May, A. D. 1901.

This action came on regularly for trial. The said parties appearing by their attorneys T. D. Johnson, Esq., counsel for plaintiff, and Ricy H. Jones and B. H. Jones, Esq., for defendants. A jury of eight persons was regularly empanneled and sworn to try said action. Witnesses on the part of plaintiff and defendant- were sworn and examined. After hearing the evidence, the arguments of counsel, and instructions of the court, the jury retired to consider of their verdict, and subsequently returned into court, and, being called, answered to their names and on their oaths say:

We, the jury empanneled in the above-entitled cause, find the issues joined herein in favor of said defendants and against the plaintiff, no cause of action.

Dated May 18th, 1901.

JOHN BURROWS, *Foreman.*

Wherefore, by virtue of the law, and by reason of the premises aforesaid, it is ordered, adjudged and decreed that said judgment herein be in favor of said defendant and against the said plaintiff, no cause of action, and that said defendant do have and recover the costs and disbursements incurred in this action, amounting to the sum of — dollars.

Interrogatories Submitted to Jury.

Has the defendant Charles H. Dudley been in the open actual, continuous, notorious, exclusive and hostile possession of the tract described in his answer.

Answer. Yes.

If so, during what time?

Answer. From Oct. 20, 1868 till the present.

Under what claim of right, if any, has the said defendant claimed the said land?

Answer. Inheritance deed destroyed by fire.

If claimed, for what period has he claimed in his own right

—. From 1868 till the present time

And for what period has his predecessors or grantor claimed it?

Answer. From Oct. 20, 1868 till deed was given

Who has paid the taxes upon the premises described in the complaint, and for what years.

Answer. Partly defendants and partly plaintiff. Jury do not know what year.

JOHN BURROWS, *Foreman.*

Judgment recorded the 23rd day of May, A. D. 1901.

Judgment Record One, page 384.

Judgment Docket, — page —.

36 In the District Court of the First Judicial District, County of Box Elder, State of Utah—Hon. Chas. H. Hart, Judge.

TOLTEC RANCH COMPANY, a Corporation, Plaintiff,
vs.
GEORGE COOK ET AL., Defendants.

Judgment on Verdict in Open Court 18th Day of May, A. D. 1901.

This action came on regularly for trial. The said parties appearing by their attorneys T. D. Johnson, Esq., counsel for plaintiff, and Ricy H. Jones and B. H. Jones, Esq., for defendants. A jury of eight persons was regularly empanneled and sworn to try said action. Witnesses on the part of plaintiff and defendant- were sworn and examined. After hearing the evidence, the arguments of counsel, and instructions of the court, the jury retired to consider of their verdict, and subsequently returned into court, and, being called, answered to their names and on their oaths say:

We, the jury empanneled in the above-entitled cause, find the issues joined herein in favor of said defednants and against the plaintiff, no cause of action.

Dated May 18th, 1901.

JOHN BURROWS, *Foreman.*

Wherefore, by virtue of the law, and by reason of the premises aforesaid, it is ordered, adjudged and decreed that said judgment herein be in favor of said defendant and against the said plaintiff, no cause of action, and that said defendant do have and recover the costs and disbursements incurred in this action, amounting to the sum of — dollars.

Interrogatories Submitted to Jury.

Has the defendant Alfred Ward been in the open, actual, continuous, notorious, exclusive and hostile possession of the tract described in his answer.

Answer. Yes.

If so, during what time?

Answer. From April 9, 1896 till the present time.

Under what claim of right, if any, has the said defendant claimed the said land?

Answer. By purchase.

If claimed, for what period has he claimed in his own right?

—. From April 9, 1896 till the present.

And for what period has his predecessors or grantor claimed it?

Answer. From Oct. 20, 1868 till April 9, 1896.

Who has paid the taxes upon the premises described in the complaint, and for what years.

Answer. Partly defendants and partly plaintiff. Jury do not know what year.

JOHN BURROWS, *Foreman.*

Judgment recorded the 23rd day of May, A. D. 1901.

Judgment Record One, page 384.

Judgment Docket —, page —.

37 In the District Court of the First Judicial District, County of Box Elder, State of Utah—Hon. Chas. H. Hart, Judge.

TOLTEC RANCH COMPANY, a Corporation, Plaintiff,
vs.
GEORGE COOK ET AL., Defendants.

Judgment on Verdict in Open Court 18th Day of May, A. D. 1901.

This action came on regularly for trial. The said parties appearing by their attorneys T. D. Johnson, Esq., counsel for plaintiff, and Riey H. Jones and B. H. Jones, Esq., for defendants. A jury of eight persons was regularly empaneled and sworn to try said action. Witnesses on the part of plaintiff and defendant- were sworn and examined. After hearing the evidence, the arguments of counsel, and instructions of the court, the jury retired to consider of their verdict, and subsequently returned into court, and, being called, answered to their names and on their oaths say:

We, the jury empanneled in the above-entitled cause, find the issues joined herein in favor of said defendant and against the plaintiff, no cause of action.

Dated May 18th, 1901.

JOHN BURROWS, *Foreman.*

Wherefore, by virtue of the law, and by reason of the premises aforesaid, it is ordered, adjudged and decreed that said judgment herein be in favor of said defendant and against the said plaintiff, no cause of action, and that said defendant do have and recover the costs and disbursements incurred in this action, amounting to the sum of — dollars.

Interrogatories Submitted to Jury.

Has the defendant Joseph Dudley been in the open actual, continuous, notorious, exclusive and hostile possession of the tract described in his answer.

Answer. Yes.

If so, during what time?

Answer. From Oct. 20, 1868 till the present.

Under what claim of right, if any, has the said defendant claimed the said land?

Answer. Inheritance—deed destroyed by fire.

If claimed, for what period has he claimed in his own right —. From the date of his lost deed till the present time

And for what period has his predecessors or grantor claimed it?

Answer. From Oct. 20, 1868 till deed was given.

Who has paid the taxes upon the premises described in the complaint, and for what years.

Answer. Partly defendants and partly plaintiff. Jury do not know what year.

JOHN BURROWS, *Foreman.*

Judgment recorded the 23rd day of May, A. D. 1901.

Judgment Record One, page 384.

Judgment Docket —, page —.

38 In the District Court of the First Judicial District, County of Box Elder, State of Utah—Hon. Chas. H. Hart, Judge.

TOLTEC RANCH COMPANY, a Corporation, Plaintiff,
vs.
GEORGE COOK ET AL., Defendants.

Judgment on Verdict in Open Court 18th Day of May, A. D. 1901.

This action came on regularly for trial. The said parties appearing by their attorneys T. D. Johnson, Esq., counsel for plaintiff, and Ricy H. Jones and B. H. Jones, Esq., for defendants. A jury of eight persons was regularly empanneled and sworn to try said action. Witnesses on the part of plaintiff and defendant- were sworn and examined. After hearing the evidence, the arguments of counsel, and instructions of the court, the jury retired to consider of their verdict, and subsequently returned into court, and, being called, answered to their names and on their oaths say:

We, the jury empanneled in the above-entitled cause, find the issues joined herein in favor of said defendants and against the plaintiff, no cause of action.

Dated May 18th, 1901.

JOHN BURROWS, *Foreman.*

Wherefore, by virtue of the law, and by reason of the premises aforesaid, it is ordered, adjudged and decreed that said judgment herein be in favor of said defendant- and against the said plaintiff, no cause of action, and that said defendant- do have and recover the costs and disbursements incurred in this action, amounting to the sum of — dollars.

Interrogatories Submitted to Jury.

Have the defendant- S. N. Cook and Geo. Cook been in the open actual, continuous, notorious, exclusive and hostile possession of the tract described in his answer.

Answer. Yes.

If so, during what time?

Answer. From April 4th, 1882, till the present time.

Under what claim of right, if any, *has* the said defendant- claimed the said land?

Answer. By purchase

If claimed, for what period have they claimed in their own right —. Ever since April 4, 1882.

And for what period *has his* predecessors or grantor claimed it?

Answer. From Oct. 20, 1868 till April 4, 1882.

Who has paid the taxes upon the premises described in the complaint, and for what years.

Answer. Partly defendants and partly plaintiff. Jury do not know what year.

JOHN BURROWS, *Foreman.*

Judgment recorded the 23rd day of May, A. D. 1901.
Judgment Record One, page 384.
Judgment Docket —, page —.

39 In the District Court of the First Judicial District, County of Box Elder, State of Utah— Hon. Chas. H. Hart, Judge.

TOLTEC RANCH COMPANY, a Corporation, Plaintiff, *vs.* GEORGE COOK ET AL., Defendants.	Judgment on Verdict in Open Court 18th Day of May, A. D. 1901.

This action came on regularly for trial. The said parties appearing by their attorneys T. D. Johnson, Esq., counsel for plaintiff, and Rice H. Jones and B. H. Jones, Esq., for defendants. A jury of eight persons was regularly empanneled and sworn to try said action, witnesses on the part of plaintiff and defendant- were sworn and examined. After hearing the evidence, the arguments of counsel, and instructions of the court, the jury retired to consider of thir verdict, and subsequently returned into court, and, being called, answered to their names and on their oaths say:

We, the jury empanneled in the above-entitled cause, find the issues joined herein in favor of said defendants and against the plaintiff, no cause of action.

Dated May 18th, 1901. JOHN BURROWS, *Foreman.*

Wherefore, by virtue of the law, and by reason of the premises aforesaid, it is ordered, adjudged and decreed that said judgment herein be in favor of said defendant- and against the said plaintiff, no cause of action, and that said defendant- do have and recover the costs and disbursements incurred in this action, amounting to the sum of — dollars.

Interrogatories Submitted to Jury.

Have the defendants Carson F. Wells and C. J. Wells been in the open actual, continuous, notorious, exclusive and hostile possession of the tract described in his answer?

Answer. Yes.

If so, during what time?

Answer. From Nov. 23rd, 1891, till the present time.

Under what claim of right, if any, have the said defendants claimed the said land?

Answer. By purchase.

If claimed, for what period *has he* claimed in *his* own right?

—. From Nov. 23rd, 1891, till the present.

And for what period *has his* predecessors or grantor claimed it?

Answer. From Oct. 20, 1868, till Nov. 23rd, 1891.

Who has paid the taxes upon the premises described in the complaint, and for what years?

Answer. Partly defendants and partly plaintiff. Jury do not know what year.

JOHN BURROWS, *Foreman.*

Judgment recorded the 23rd day of May, A. D. 1901.

Judgment Record One, page 389.

Judgment Docket —, page —.

40 In the District Court of the First Judicial District, County of Box Elder, State of Utah—Hon. Chas. H. Hart, Judge.

TOLTEC RANCH COMPANY, a Corporation, Plaintiff, vs. GEORGE COOK ET AL., Defendants.	Judgment on Verdict in Open Court 18th Day of May, A. D. 1901.

This action came on regularly for trial. The said parties appearing by their attorneys T. D. Johnson, Esq., counsel for plaintiff, and Ricy H. Jones and B. H. Jones, Esq., for defendants. A jury of eight persons was regularly empanneled and sworn to try said action. Witnesses on the part of plaintiff and defendant- were sworn and examined. After hearing the evidence, the arguments of counsel, and instructions of the court, the jury retired to consider of their verdict, and subsequently returned into court, and, being called, answered to their names and on their oaths say:

We, the jury empanneled in the above-entitled cause, find the issues joined herein in favor of said defendants and against the plaintiff, no cause of action.

Dated May 18th, 1901.

JOHN BURROWS, *Foreman.*

Wherefore, by virtue of the law, and by reason of the premises aforesaid, it is ordered, adjudged and decreed that said judgment herein be in favor of said defendant- and against the said plaintiff, no cause of action, and that said defendant- do have and recover the costs and disbursements incurred in this action, amounting to the sum of — dollars.

Interrogatories Submtted to Jury.

Has the defendant George Ward been in the open actual, continuous, notorious, exclusive and hostile possession of the tract described in his answer.

Answer. Yes.

If so, during what time?

Answer. From April 30, 1885, till the present time.

Under what claim of right, if any, has the said defendant claimed the said land?

Answer. By purchase.

If claimed, for what period has he claimed in his own right from April 30, 1885, till the present, and for what period has his predecessors or grantor claimed it?

Answer. From Oct. 20 1868 till April 30, 1885.

Who has paid the taxes upon the premises described in the complaint, and for what years.

Answer. Partly defendants and partly plaintiff. Jury do not know what year.

JOHN BURROWS, *Foreman.*

Judgment recorded the 23rd day of May, A. D. 1901.

Judgment Record One, page 390.

Judgment Docket — page —.

41 In the District Court of the First Judicial District in and for the County of Box Elder, State of Utah.

TOLTEC RANCH COMPANY, Plaintiff,
vs.
GEO. COOK ET AL., Defendants. } No. 406. Certificate.

STATE OF UTAH,
County of Box Elder, } *ss:*

I, the undersigned, clerk of the district court of the first judicial district in and for the county of Box Elder, State of Utah, do hereby certify that the foregoing is a true copy of the judgment rendered in the above-entitled action and recorded in Judgment Book One of said court at pages 384 to 390 inc.

And I further certify that the foregoing papers hereto annexed constitute the judgment-roll in said action.

Witness my hand and seal of said court, hereto set on this 23rd day of May, A. D. 1901.

[SEAL.] JOSEPH JENSEN, *Clerk.*

42 In the District Court of the First Judicial District, Box Elder County, State of Utah.

TOLTEC RANCH COMPANY, a Corporation, Plaintiff,
vs.
GEORGE COOK, S. N. COOK, ALFRED WARD, GEORGE WARD, C. J. Wells, C. F. Wells, Joseph Dudley, and Charles Dudley, Defendants.

Notice of Intention to Move for a New Trial.

Please take notice that the plaintiff intends to move the court to set aside and vacate the decision heretofore on the 23rd day of May rendered herein, and to grant a new trial in this case, upon the following grounds:

1. Insufficiency of the evidence to justify the decision in favor of the defendants and against the plaintiff.
2. That said decision is against law.
3. On account of errors at law occurring at the trial and excepted to by the plaintiff.

This motion will be made upon the minutes of the court.

CHASE & CHASE AND
T. D. JOHNSON,
Attorneys for Plaintiff.

To the above-named defendants, and their attorneys, R. H. Jones and B. H. Jones.

43 In the District Court of the First Judicial District of Utah in and for the County of Box Elder.

TOLTEC RANCH COMPANY, Plaintiff,
vs.
GEORGE COOK ET AL., Defendants. } Bill of Exceptions.

Be it remembered, at the trial of the above-entitled cause the following proceedings were had: A jury having been called, the plaintiff objected to empanneling the same, and objected as follows:

Mr. JOHNSON: The plaintiff objects to calling a jury for the trial of this case for the reason that it's a suit in equity, and is a case to be tried by the court, and not a law case to be tried by a jury.

The COURT: If there are any equitable issues, they may be disposed of first, and if there are any law issues they may be disposed of by the jury after.

Mr. JOHNSON: There is no such condition existing here. The complaint is simply an action to quiet title against the defendants. In addition to the objection already made, I want to add this by the answers of the defendants here, they set up separate claims to separate and distinct parcels of the land claimed and set out in the plaintiff's complaint and there are a number of defendants in the action here, and they are attempting to segg*r*egate and to make a separate law action of each individual defendant's claim.

The COURT: If the answer raises issue at law, those issues may be tried by a jury notwishstanding th[illegible]nplaint is framed on the equity side of the court. It may be th[illegible]e is some equitable relief to be tried and determined in this case. If that were so, it wouldn't prevent the defendants from having issues at law tried by a jury. I think a jury may be called in this case and if it shall appear later that it is strictly an equitable suit, the jury may be considered merely advisory.

Mr. JOHNSON: Note an exception.

Mr. JONES: The description in one of these answers is slightly indefinite. We ask leave to amend it.

The COURT: You may do so.

44 Mr. JONES: The amendment to be inserted in the Charles H. Dudley answer: "Commencing 6.72 chains north of the southeast corner of section 27, township 8, north of range 2 west; thence north 89′ 29″ west 20 chains; thence north 3.58 chains; thence south 89′ 29″ east 20 chains; thence south 3.50 chains to point of beginning, containing 6.37 acres. Also commencing at the southeast corner of section 27, tp. 8 N. range 2 west; thence west 20 chains; thence north 3 chains; thence south 89′ 81″ east 30 chains; thence south 2.83 chains to place of beginning, containing 5.28 acres, exclusive of the railway claim.

Mr. JOHNSON: At this time we ask the substitution of the real names of the defendants for the fictitious names of John Doe and Richard Roe, Jane Roe.

The COURT: They may be so added.

The COURT: Examination of the jury for cause by the plaintiff.

Mr. JOHNSON: To be consistent we don't claim any examination.

Mr. JOHNSON: It is stipulated that the plaintiff in this case is the grantee through mesne conveyances from the Central Pacific Railroad Company of the lands set out and described in plaintiff's complaint, and that a patent of the United States Government was duly issued and delivered to the said Central Pacific Railroad Company, bearing date Jan. 20, 1900, conveying the said land described in the complaint with other lands; that the Central Pacific Co. by deed dated Oct. 17, 1895 conveyed said lands to D. P. Tarpey as grantee, and that D. P. Tarpey and wife, as grantors conveyed said land by deed to M. F. Tarpey, bearing date Dec. 8th '95; and that M. F. Tarpey and wife conveyed the said land to the plaintiff in this action by deed bearing date Oct. 17, 1896.

45 It is further stipulated and agreed that no claim of any right or title to or in the right of way of the Central Pacific Railroad Company across the said premises described in said complaint is made by any or either of the defendants herein. It is stipulated that the form of patent issued by the United States Government to said railroad company may hereafter be inserted in the records as well as all of the other conveyances in the stipulation heretofore mentioned.

Copies of said patent and deeds are attached hereto and marked Plaintiff's Exhibits "A," "B," "C," and "D," respectively.

Plaintiff rests.

B. H. JONES: It is hereby stipulated by and between the attorneys and parties to this action that the map of location of the Central Pacific Railroad Company was filed in the office of the Secretary of the Interior on the 20th day of Oct. 1868; that the land described in the complaint is within the ten-mile limit of the grant to the Central Pacific Railroad Company. It is further stipulated that the map marked Def't Ex. 1, is a true and correct representation of the land sued on and that that description drawn by N. P. Anderson properly describes the land in dispute. And that the description in the paper and description in the map agrees.

Mr. JOHNSON: We object to the introduction of the papers in evidence as irrelevant and immaterial.

The COURT: Objection overruled. Papers admitted. Exception noted.

J. J. WARD, being first duly sworn, testified as follows:

Examined by Mr. JONES:

I live at Willard, Box Elder county; am 47 years old; have
46 lived at Willard all my life; am acquainted with the southeast quarter of section 27, township 8, north range 2 west; have been acquainted with it ever since I can remember; have always lived about three-quarters of a mile south of it; the above land is southwest of Willard, in Box Elder county; am acquainted with Charles Dudley; have known him ever since I can remember;

he has lived in Willard until recently; am acquainted with Joseph Dudley, have always known him the same as Charles.

Q. Have Joseph Dudley and Charles Dudley been occupying any of this land?

Mr. JOHNSON: We object as incompetent, immaterial and irrelevant. Under the issues in this case the statute of limitations is attempted to be set up herein against us and under the proof that has been introduced on behalf of the plaintiff, showing the issuance of a patent of the United States to the railroad company, bearing date the 20th of January, 1900, constitutes no defense; and any proof of the occupancy prior to that date or at all, seeing that as much as seven years have not elapsed since the issuance of patent, it becomes wholly immaterial, and the defense attempted to be made herein, cannot prevail, as a matter of law.

The COURT: The objection may be overruled. Exception noted.

Q. Have the Dudleys been occupying any portion of this land?

Mr. JOHNSON: We want to save and objection to all the testimony offered for the purpose of proving or tending to prove an adverse claim.

The COURT: You may have an exception to all the testimony offered on the ground above stated. If there is any other objection, on any other ground, you may make it as you go along. To this one general question that you have raised, you may have an exception to all the testimony against all the defendants.

A. They have (referring to map, Defendants' Exhibit "1"); Charles Dudley occupied the south portion; Joseph a strip
47 next to Charles; the next strip was a portion of the O. H. Dudley estate, which Charles Dudley now holds; they have occupied the three south tracts marked on Exhibit "1" ever since 1886; during that time they have used it in a general way as farmers use land, cut hay off it, used it as farmers generally use land of that character; the land is pasture land, grass land; they have pastured it, and cut hay off it; have lived in Willard since 1868, except from December, 1890, to the spring of 1893; except the years I was absent I know Joseph and Charles Dudley have occupied, and used this land; they have crop-ed it and pastured it every year; this land of the Dudleys is fenced, has been since 1872 or 1873 as a separate inclosure; has been fenced with a wire fence on all sides; prior to the time mentioned this land was inclosed with a fence which inclosed the lands lying south and west of Willard towards the lake, inclosing in one field all the lands in that neighborhood belonging to the settlers; the Dudleys have removed the willows, dug ditches on this land; have had conversations with Charles Dudley with reference to the ownership of the land; it isn't over two years ago when I had it; I don't remember the conversation; he said he owned that part of the quarter. I know George J. Wells, have known him ever since I can remember; am acquainted with the 3 16/100 acres he has been in possession of; it lies immediately north of the Dudley tract; it was inclosed in the joint inclosure

spoken of above; the claims of C. F. Wells and George J. Wells are at present inclosed together; they have been separately inclosed together 6 or 7 years—6.32 acres; have known this land to be used and occupied the same time as the other spoke of, since 1868; it was cropped and pastured every year from that time to the present, I know, except the time I was away; was used as farmers ordinarily use land of that character during all of these years; hay was cut from it and it was pastured; it was at first covered by willows; these have been grubbed out; about half of it has been grubbed out; have talked with C. G. Wells concerning this land, I think every year; in the last conversation prior to this suit he said it was their land.

48 I have been acquainted with the two tracts immediately north of the Wells land—the Ward land—ever since I was a little boy; worked on it until late years, ever since I was big enough to drive a team, every year until I left home; it was then George W. Ward estate, my father's then.

Q. What use has been made of that land since October 20th 1868?

Mr. JOHNSON: I object to any proof of the use of it while it was Geo. Ward estate, or during his lifetime.

Mr. JONES: We'll connect it with the decree.

Mr. JOHNSON: I object as incompetent, irrelevant and immaterial.

Objection overruled; exception taken.

A. It has been cropped and worked every year; cropped and worked and used as that character of land is ordinarily used from 1868 to the present time; the land designated as the Ward land is not pasture land, it is good for raising crops, farming land; it was usually cultivated to corn, wheat and potatoes; these tracts were inclosed in the joint inclosure I spoke of; the piece referred to here and Mr. Cook's are now in the same inclosure, on the north side of Mr. Wells; the Southern Pacific railroad running through this quarter is fenced on both sides of the track; this tract of land of Alfred Ward marked on Exhibit "1" has been fenced as it is to-day, maybe about ten years, I can't say definitely; prior to that they were inclosed in the joint inclosure; this joint inclosure kept out cattle from the lands inclosed; the Oregon Short Line railroad just cuts off the northeast quarter of the quarter in dispute; it is fenced on both sides; the west fence of the railroad fences in the east portion of this land; I have know- the Cook lands shown on the exhibit the same period I have known father's farm; the George Cook land, east of the Southern Pacific, is farming land; a little bit is grass land; it has been farmed 37 pears; wheat, corn and potatoes have been raised upon it; he has this piece fenced in with the rest of his land north of this; I have known the S. N. Cook land, which is west of the Southern Pacific track and north of the Geo.

Ward 2.32 acres, the same period as the others; it has been
49 cultivated, pastured and cropped each and every year from 1868 to the present time, that is fenced in with the rest of the Geo. Cook and the S. N. Cook's tracts of land that extends

further on to the north; there is a fence between Geo. Ward and S. N. Cook west of the Southern Pacific railroad, north of the Geo. Ward land; each and every tract of land marked upon Defendants' Exhibit "1," on the southeast quarter of the southeast quarter of sec. 27, township 8, north range 2 west, has been used as farmers ordinarily use such lands each and every season from October 12, 1868, down to the present time, of my own knowledge, except those two years I was away; it has been fenced so as to prevent cattle from coming upon it, and has been occupied by these claimants or their predecessors; John Jones owned the Cook place prior to his occupation; the Geo. Ward land west of the S. P. track is all meadow land at present; they have cut hay from it and pastured it each and every year down to the present; it is separately fenced by itself; have had conversations with Geo. Ward with reference to this 3.32 acres; have had conversations with him about it every year since 1882; he made arrangements with me to cut his hay; he don't reside there; I've tended to it, cut the hay, seen to it for him; I cut the crop on shares; Mr. Ward never paid any rent for the land; none of these defendants ever paid any rent; have had conversations with S. N. Cook with regard to the —.36 acre marked on Exhibit "1;" he said he bought that land of John D. Jones, and he owned it; have had conversations with Geo. Cook about the 1.37, acres on the north; he said the same thing; that he bought it of John D. Jones, and that he owned it.

It was admitted by all the parties hereto, that the southeast quarter of the southeast quarter of section 27, township 8, north range 2, west, being the land in dispute in this action, was regularly and legally assessed for taxes as follows: 1891 against D. P. Tarpey, 1892 against D. P. Tarpey, and for each of said years paid by him; 1893 against D. P. Tarpey and sold that year for the said taxes to Moroni Ward; 1894 and 1895 against Moroni Ward and paid by him; in 1895 said Tarpey redeemed said land from the tax sale of 1893, and at that time he paid the taxes for the years 1893–'4–'5, with the interest and costs; in 1896 said lands were regularly and legally assessed to Moroni Ward, and were sold to Box Elder county for said taxes; in 1897 and 1898, the said lands were regularly and legally assessed to the Toltec Ranch Company, but was not paid by any one.

JOHN A. EDWARDS, being duly sworn, testified as follows:

Examined by Mr. JONES:

I am the county assessor of Box Elder county; I have the books of said assessor's office in my charge; I have examined the assessment-rolls in said office for the year 1890, and the years prior thereto; they do not show that the land in dispute or any portion thereof was assessed for taxes for said year or any year prior thereto against either the Southern Pacific Railroad Company, or D. P. Tarpey, or any of the defendants; there is in the books of said office for said years no desciption of the said lands in dispute.

JOSEPH S. DUDLEY, being duly sworn, testified in behalf of the defendant and intervenor, as follows:

I am one of the defendants in this action; am 49 years old; with the exception of two years have lived at Willard as long as I can remember.

(It was admitted by the plaintiff that this witness would testify in substance and effect the same as the witness J. J. Ward; subject however to the same objection, as hereinbefore set out as made to the admission of the testimony of said witness, which said
51 objection was by the court overruled, and to which ruling of the court the plaintiff duly excepted.

Continuing the witness Dudley, further testified:

Am acquainted with the land in dispute; my own claim is that I have owned that land since '72, occupied and improved it; have never paid the railroad company or D. P. Tarpey, or any one else any rent for it; my claim to that land has been ownership, possession; I obtained the land from O. H. Dudley; as to Charles Dudley's claim, he has been in possession of the one on the south since '70; the one on the north he has been in possession of since '98.

Q. Who was in possession of it prior to 1898?

Objected to as incompetent, irrelevant and immaterial.
Objection overruled, and exception taken.

A. Oliver H. Dudley the father of Charles Dudley.
Q. How long was Oliver Dudley in possession of that land?

Objected to on the grounds above stated. Objection overruled, and exception taken.

A. Since '60 or '61.
51½ Q. That is Charles Dudley's father?
A. Yes, sir.
Q. Is Oliver Dudley dead?
A. Yes, sir.
Q. When did he die?
A. He died in '98.
Q. Charles Dudley was his son?
A. Yes.
Q. Did he go in as heir of your father?

Mr. JOHNSON: I object as a legal conclusion.
The COURT: Objection sustained.

Q. Do you know how he went into possession of the property?
A. Yes.
Q. You may explain how?

Mr. JOHNSON: We object to that as incompetent, irrelevant and immaterial.
The COURT: The answer may be taken.
Exception noted.

A. Possession.

Q. Did he go in——
A. He went in by possession.
Q. Who put him in possession, do you know?

Mr. JOHNSON: May I have an exception to all this testimony?
The COURT: Yes.

A. Oliver H. Dudley put him in possession before his death.
Q. How long before his death?
A. Three or four days.
Q. Give him a deed.
A. No.
Q. What claim did Oliver H. Dudley have to that land from 1898 back to 1868.

Mr. JOHNSON: Same objection. He's attempting to tack.
The COURT: Objection overruled.
Exception noted.

52 A. Yes, sir; he claimed the land.
Q. What was his claim?
A. I don't know as I understand.
Q. Do you know by what right, if any, your father claimed that land?
A. He bought it in the first place.
Q. Did he obtain a deed?
A. Yes sir.
Q. Where is that deed?
A. The deed is destroyed—burned.
Q. Was it recorded?
A. No sir.
Q. From whom did he obtain that deed?
A. A man by the name of Lish.
Q. What did he pay for the land?
A. $60.
Q. You know that that deed is destroyed?
A. Well, we had a fire and everything was burned in the house.
Q. Did you have the deed prior to that time?
A. We had the deed prior to that time.
Q. You've never been able to find it since?
A. No.
Q. The deed is either lost or destroyed?
A. Destroyed.
Q. Your father paid $600?
A. Yes sir.
Q. To Lish?
A. Yes sir.
Q. That included the strip above it too?
A. That included the strip clear through, land lying east of this.
Q. Your father cropped it every year for those years?
A. Yes.

Q. How long has Charles H. Dudley had the south por-
53 tion, if he has ever had it?

A. He's had the south portion ever since '70.
Q. How long have you had the portion immediately north of that?
A. Since '72.
Q. What is Charles Dudley's claim to the south portion?
A. Charles *claim* in by possession. He's owned it ever since '70.
Q. Do you ever know of this property being given in to the assessor for assessment and taxes.
A. Yes sir.
Q. Have you ever given it?
A. Yes sir.
Q. In what years?

Mr. JOHNSON: I object as immaterial.
The COURT: Whether it would have a bearing upon his claim of ownership—on the tax proposition, it may be sustained.

Q. Have you ever paid taxes on this portion of the land?
A. Yes, sir.
Q. Have you always paid the taxes that have been levied and assessed against you?
A. Yes.
Q. For how many years have you paid taxes on this land?
A. Ever since '72.
Q. Has your brother ever paid taxes on his south 5 acres and twenty-seven-hundredths?
A. Yes sir.
Q. Ever since how long?
A. Ever since '70.
Q. Did Oliver Dudley ever pay taxes on the north 6.27 acres immediately north of yours?
A. Yes sir ever since '60.

54 Cross-examination:

I went on this land, what I claim, in 1872; was 21 at the time; my father gave it to me.
Q. What claim of right or title did you have to assert in that land since 1872.
A. Possession.
Q. You've had possession, but if I were to loan you my horse you'd have possession, and still you wouldn't claim to own him would you?
A. No, I don't think I would.
Q. Then what kind of claim of right have you since that time asserted that you own that land?
A. I stated by possession.
Q. Is that all?
A. That's all.
Q. Simply because you were in possession, therefore your land?
A. Because I had been in possession and paid taxes on it every year.

Q. Do you have any other claim than those two facts you have stated, upon which you base your claim of ownership to that land?

A. Why yes, the right of limitation in my favor.

Q. That is a legal proposition. What I am getting at is, what other fact save the fact that you say you have been in possession and have paid taxes do you base your claim of ownership in that piece of land over there?

A. Nothing more than possession.

Defendants offered in evidence the decree of court distributing the estate of George Ward, deceased.

Objected to by plaintiff as irrelevant and immaterial.

Objection overruled, and plaintiff duly excepted. Received in evidence and marked Defendants' Exhibit "O."

55 Defendants offered in evidence deed, dated April 9, 1896, from Moroni Ward and wife to Alfred Ward.

Objected to as irrelevant and immaterial. Objection overruled and exception taken. Received in evidence and marked Defendants' Exhibit "2."

Defendants offered in evidence deed from John D. Jones to Geo. Cook and Samuel N. Cook dated April 4th, 1892.

Objected to as irrelevant and immaterial. Objection overruled and exception taken. Received in evidence and marked Defendants' Exhibit "3."

Defendants offered in evidence deed from Lyman B. Wells and wife to Geo. J. Wells and Carson F. Wells, dated Nov. 23rd, 1891. Objected to as irrelevant and immaterial; objection overruled, and exception taken. Received in evidence and marked Defendants' Exhibit "4."

Defendants offered in evidence deed from Richard T. Ward and wife to George Ward, dated April 30, 1885. Objected to as irrelevant and immaterial. Objection overruled, and exception taken. Received in evidence and marked Defendants' Exhibit "5."

S. N. Cook, being duly sworn, testified as follows:

Examined by Mr. Jones:

There was a house on the quarter in dispute in this suit as early as 1869 or '70; my claim to the — .36 of an acre of land which I claim in this suit is, my father and I bought that in connection with other land from John D. Jones that lies north and east of it; the deed conveying it has been offered in evidence (Exhibit "3") have never paid rent to any one for it; have never disavowed ownership in it; have always claimed to own it since I purchased it; have paid taxes on it ever since we possessed it; so has Geo. Cook on his.

56 (It was also admitted that this witness would testify in substance and effect the same as witness J. J. Ward, subject however to the same objection as hereinbefore set out as made to, the admission of the testimony of said witness, which objection was overruled, to which ruling the plaintiff duly excepted.)

LYMAN B. WELLS, being first duly sworn, testified, as follows:

Examined by Mr. JONES:

Am 70 years old; have resided at Willard since '61; am acquainted with the land in dispute; have been since '52; I was in possession of a part of it at the time the Central Pacific built its road through this tract; the railroad company paid me $70.00 for the damage done to my land, or for a right of way; I know it paid some of the other occupants of this particular land besides myself.

(The same admission was made respecting the testimony of this witness, as made respecting the other hereinbefore contained, with the same objection, ruling and exception.)

57 J. J. WARD, recalled, testified as follows:

Examined by Mr. B. H. JONES:

Q. Do you know what farm in your father's estate was commonly known as the South farm?

Mr. JOHNSON: We object as incompetent, irrelevant and immaterial, and further object that any such decree of distribution wouldn't distribute anything under any such description as that.

B. H. JONES: We offer the inventory and appraisement.

Mr. JOHNSON: We don't make any question about the identification of the papers, but we object to both the papers on the ground stated.

B. H. JONES: All we claim for it is simply this: under our statute any kind of a written conveyance is color of title. We also offer the map from the recorder's office of this State, showing parcel No. 1, and parcel No. 2.

The COURT: This map is not referred to in this instrument.

Mr. B. H. JONES: Another thing, it shows the openness of the claim, having it administered on and distributed.

58 The COURT: You may proceed with the testimony and see what it is.

Exception noted.

Q. State whether or not you were acquainted with what is known as the South farm in the Ward estate?

A. Yes.

Q. Did that include——.

Mr. JOHNSON: Don't ask leading questions.

Q. What did that include.

A. That included this land in the Ward estate.

Mr. JOHNSON: This all goes in under my objection.

Q. Which land do you mean when you say this land?

A. It included what is in dispute in section 27. Also in section 26.

Q. Calling your attention to Defendants' Exhibit 1, did I understand you to say that the 3.32 acres and the Alfred Ward 6.12 acres in the southeast quarter of the southeast quarter of 27, 8, 2 west.

A. Yes sir.

Q. Was that so-called South farm parcelled out?

A. Yes sir.

Q. Do you know what the numbers were?

A. Yes sir.

Q. Well then, what was the George Ward 3.32 acres, what number of a parcel?

A. It was known as No. 1 of the South farm.

Q. What was the Alfred Ward 6.12 acres known as?

A. Parcel 2 of the South farm.

Defendants rest.

59 The above and foregoing testimony, with the exhibits hereto attached is all the evidence taken, heard and considered at the trial of said causes.

Mr. JOHNSON: The plaintiff moves the court for judgment in this case in favor of the plaintiff, and against the defendants and each of them on the following grounds:

1. The uncontradicted evidence in the case shows that the land described in the complaint, and in dispute in this action is contained in the grant of Congress to the Central Pacific Railroad Company.

2. That the evidence wholly fails to show when the said lands were surveyed by the Government of the United States, and wholly fails to show when the said lands were set apart or set off to the company at any time prior to the 4th day of February, 1884, when it appears from the evidence in this case that the said lands were selected by the company under its grant.

3. That the uncontradicted proof in the case shows that patent for the said land was issued by the United States Government and delivered to the railroad company for the said lands on the 20th day of February, 1900, and that by reason of the matters proved as herein stated and by reason of the failure of the defendants upon the questions herein indicated, the plaintiff in this action is entitled to judgment, and the defense set up by the defendants by way of the plea of the statutes of limitations is unavailing, and no defense to this action.

The COURT: The motion may be denied. The court will submit to the jury the question of the issues raised by the answers—title in defendants by adverse possession.

To which ruling of the court plaintiff duly excepted.

60 In the District Court of the First Judicial District of the State of Utah in and for Box Elder County.

TOLTEC RANCH COMPANY, Plaintiff,
vs.
GEORGE COOK ET AL., Defendants.

Instructions of Court to Jury.

The court charges the jury as follows:

I. Plaintiff alleges in its complaint that it is a corporation organized and existing under and by virtue of the laws of the State of Utah, that plaintiff is now and for a long time has been the owner in fee and entitled to the possession of all that certain real estate situate in Box Elder county, State of Utah, and described as follows: The southeast quarter of the southeast quarter of section 27, township 8, north range 2 west, Salt Lake meridian U. S. survey.

II. The defendants answer said complaint, and all the defendants admit the corporate existence of the plaintiff company, and each and all deny that plaintiff is or ever has been the owner in fee or entitled to that tract or portion of land set up and claimed respectively by the defendants in their separate and several answers: For a further defense each defendant alleges that he and his grantors and predecessors have claimed possessed, and owned the respective tracts claimed by the several defendants and comprising in all the land described in the plaintiff's complaint, and that plaintiff's cause of action is barred by the statute of limitations as
61 provided by sections 2856 to 2872 inclusive of the Revised Statutes of Utah.

III. You are instructed that under the stipulation of counsel and the evidence in this case the legal or record title to the premises in dispute is in the plaintiff in this case. The question for you to determine is whether the plaintiff is barred by the statute of limitations or adverse possession to the said premises, or respective portions thereof claimed by the defendants respectively. If adverse possession in the defendants and each of them is made out and proved as hereinafter more fully explained, then the plaintiff cannot recover.

IV. The burden of proof is on the defendants to make out their defence of possession by a preponderance of the evidence.

V. Section 2861 provides: In every action for the recovery of real property, or the possession thereof, the person establishing a legal title to the property shall be presumed to have been possessed thereof within the time required by law, and the occupation of the property by any other person shall be deemed to have been under and in subordination to the legal title unless it appears that the property has been held and possessed adversely to such legal title for seven years before the commencement of the action.

VI. Section 2862 provides: Whenever it shall appear that the occupant or those under whom he claims entered into possession of

the property under claim of title exclusive of other right, founding such claim upon a written instrument, as being a conveyance of the property in question, or upon the decree or judgment of a competent court, and that there has been a continued occupation and possession of the property included in such instrument, decree or judgment, or of some part of the property under such claim for seven years, the property so included shall be deemed to have been held adversely, except that when the property so included consists of a tract divided into lots, the possession of one lot shall not be deemed a possession of any other lot of the same tract.

62 VII. Section 2863 provides: For the purpose of constituting an adverse possession by any person claiming a title founded upon a written instrument or judgment or decree land shall be deemed to have been possessed and occupied in the following cases:

1. When it has been usually cultivated or improved.
2. Where it has been protected by a substantial inclosure.
3. Where, although not inclosed, it has been used for the supply of fuel or of fencing timber for the purpose of husbandry, or for pasturage, or for the ordinary use of the occupants.
4. Where a known farm or a single lot has been partly improved, the portion of such farm or lot that may have been left not cleared or not inclosed according to the usual course and custom of the adjoining country shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

VIII. Section 2864 provides: Where it appears that there has been an actual, continued occupation of land under claim of title, exclusive of any other right, but not founded upon a written instrument, judgment or decree, the land so actually occupied, and no other, shall be deemed to have been held adversely.

IX. Section 2865 provides: For the purpose of constituting adverse possession by a person claiming title not founded upon a written instrument judgment or decree, land is deemed to have been possessed and occupied in the following cases only:

1. Where it has been protected by a substantial inclosure.
2. Where it has been usually cultivated or improved.
3. Where labor or money has been expended upon dams,

63 canals, embankments, aqueducts, or otherwise for the purpose of irrigating said lands amounting to the sum of five dollars per acre.

X. Section 2866 provides: In no case shall adverse possession be considered established under the provisions of any section of this code, unless it shall be shown that the land has been occupied and claimed for the period of seven years continuously, and that the party or persons their predecessors and grantors have paid the taxes which have been levied and assessed upon such land according to law.

XI. The possession of the occupant must be in derogation of the title of the owner. Claim of ownership is necessary and the occupant must claim to be the absolute owner of the property in order to constitute title by adverse possession. Occupancy of land by per-

mission or sufferance of the owner would not constitute an adverse possession.

XII. The possession of the defendants and each of them in order to be adverse must have been open, notorious, actual, continuous, hostile, exclusive, and must be held adversely to the interest of the plaintiff and its predecessors.

XII½. Prior to 1884, no taxes were required to be paid in order to establish adverse possession.

XIII. By a preponderance of the evidence is meant the greater weight of the evidence, that which is more convincing as to its truth. It is not necessarily determined by the number of witnesses for or against a proposition, although all other things being equal, it may be so determined. If you find a conflict in the evidence you should reconcile it, if you can, upon any reasonable theory, if you cannot do so then you must determine what you believe.

XIII½. The court charges you that these instructions should be construed together and as a whole. Each instruction should be read and understood with reference to and as a part of the entire charge and not as though each instruction were intended to present the whole law of the case.

64 XIV. You are the sole judges of the weight of the evidence and of the facts and of the credibility of the witnesses. You are instructed that three-fourths of your number concurring you may find a verdict in this case. Upon retiring, you will select a foreman, and if all of you agree upon a verdict your foreman will sign the same; if three-fourths of your number and less than the whole agree upon a verdict, those agreeing upon the same will sign the verdict agreed upon.

Mr. JOHNSON: Comes now the plaintiff in the above-entitled action and excepts to the refusal of the court to submit the special interrogatories requested on behalf of the plaintiff to the jury for its answer, numbered 1 to 11 inclusive: Excepts to the refusal of the court to submit each and every of said special interrogatories, which said interrogatories requested are as follows:

1. When was the land in dispute and described in the complaint surveyed.

2. When did the defendant George Cook first claim title to the land set out in his answer.

3. When did S. N. Cook first claim title to the land set out in his answer.

4. When did Alfred Ward first claim title to the land set out in his answer.

5. When did George Ward first claim title to the land described in his answer.

6. When did G. J. Wells first claim title to the land described in his answer.

7. When did C. F. Wells first claim title to the land described in his answer.

8. When did Joseph Dudley first claim title to the land described in his answer.

9. When did Charles Dudley first claim title to the land described in his answer.

10. What if anything was the claim of right under which and upon which the defendants base their several claims.

11. Who has paid the taxes legally assessed upon the lands in dispute and for what years.

65 The plaintiff excepts to that certain instruction given by the court to the jury of its own motion numbered 3, and especially to that portion thereof in which the court declares the question which you are to determine is whether the plaintiff is barred by the statute of limitations, or adverse possession to said premises or the respective portions thereof claimed by the said defendants respectively in that the court thereby submits to the jury as a matter of fact to be determined by the jury *of* the defense set up by the defendants and each of them; and excepts to that portion of the instruction in which the court says; "If adverse possession in the defendants and each of them is made out and proved as hereinafter explained, then the plaintiff cannot recover," in that it submits to the jury the determination of the issue of adverse possession as a matter of fact, whereas the same is a question of law in this case to be decided by the court.

Plaintiff excepts to the instruction given by the court, numbered 5, and each and every portion thereof, in that it submits to the jury the determination of the issues to be determined in this action as matters of fact, whereas the same are questions of law to be determined by the court.

Plaintiff excepts to the instruction numbered 6, and each and every portion thereof, in that it submits to the jury for its determination as questions of fact matters which under the proof in this case are questions of law to be decided by the court, and that there is no question of fact in this case to be submitted to the jury, and to which the said instruction properly relates.

Excepts to the instruction numbered 8 (7), given by the court to the jury in that it submits to the jury questions of fact to be determined by it, whereas under the proof in this case there is no issues of fact properly submitted to the jury, that the same are questions of law to be decided by the court.

Excepts to the instruction 8, in that said instruction defines under what conditions lands may be held adversely, as therein referred to, to be determined by the jury in this case as a matter of fact, whereas under the proof in this case, the questions to be determined are matters of law to be decided by the court.

66 Excepts to the instruction numbered 9, for the reason that the definition therein given of adverse possession has no application to the facts proven in this case, and in submitting to the jury questions in this case as matters of fact, whereas the same, under the proofs herein, are questions of law to be decided by the court.

Excepts to the instruction numbered 10, in that it submits to the jury as a question of fact to be determined, whether or not the occupation and claim of the said defendants has been for the period of time by themselves or their predecessors, and the payment or non-

payment of any taxes that may have been levied, to be decided by the jury as questions of fact, whereas under the proof in this case, it is a question of law to be decided by the court, as to the right of the defendants to set up and maintain the defense under the statute of limitations.

Excepts to instruction numbered 11, for the reason that it has no application to the facts proven in this case, in that it submits to the jury questions of fact to be decided by it, whereas the questions, under the proofs in this case to be decided, are matters of law and for the court.

Excepts to instruction numbered 12 in this, that the court instructs the jury that if the possession of the defendants, or either of them shall be proven to be open, notorious, actual, continuous, hostile, exclusive, and held adversely to the interest of the plaintiff or its predecessors, that under the proofs in this case the said defendants are entitled to recover in this action, whereas under the proofs in this case the defendants are not entitled to recover and the determination of the issues herein are matters of law to be decided by the court.

67 Excepts to the 13th instruction, in that it submits the questions and issues under the proofs in this case as matters of fact to be determined by the jury, whereas under the proofs the issues herein are questions of law to be decided by the court.

Excepts to the 14th instruction in that the court submits to the jury for its decision the issues in said case upon the evidence offered in said case as matters of fact, whereas and in truth the questions to be decided herein under the proofs in this case are questions of law for the court.

Excepts to each and every of the foregoing instructions excepted to in addition to the exceptions herein stated, that each and every and all of said instructions are contrary to law, and that under the proof in this case the plaintiff is entitled to recover, and as a matter of law the defendants and each of them have failed to introduce any evidence herein under which the question of the claim made by them of holding adversely is submissible to the jury.

68 PLAINTIFF'S EX. "A."

Entered in Tract Book Jan. 29, 1900. F. C. R.

Patent No. 107. Central Pacific Railroad lands, primary limits, Salt Lake City land district, Utah. 4–446.

The United States of America to all to whom these presents shall come, Greeting:

Whereas, by the act of Congress approved July 1st, 1862, as amended by the act of Jul- 2, 1864, to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the Government the use of the same for postal, military and other purposes" and the act of July 3, 1866, authority is given to the Central Pacific Railroad Company, to con-

struct a railroad and telegraph line under certain conditions and stipulations as expressed in said act, and provision is made for granting to said company "every alternate section of public land designated by odd numbers, to the amount of ten alternate sections per mile on each side of the said railroad on the line thereof, and within the limits of twenty miles on each side of said road, not sold, reserved or otherwise disposed of by the United States, and to which a pre-emption or homestead claim may not have attached at the time the line of said road is definitely fixed," mineral lands excepted and

Whereas, an official statement bearing date November 3, 1869, from the Secretary of the Interior has been filed in this office showing that the line of said railroad and telegraph from Ogden in the Territory of Utah to Sacramento city, State of California, has been constructed and fully completed and equippped in the manner prescribed by the act aforesaid and

Whereas certain tracts of land in the State of Utah have been listed under the acts aforesaid, by the duly authorized land agent of the said Central Pacific Railroad Company as shown by his original list approved by the local land officers on file in this office, and

69 Whereas the said tracts of land lie coterminous to the constructed line of road and are particularly described, as follows, to wit:

North of base line and west of Salt Lake meridian, State of Utah. Township eight range two.

The southeast quarter of the southeast quarter of section twenty-seven, containing forty acres.

Township nine, range two.

The northeast quarter of section fifteen, containing one hundred and sixty acres.

The said tracts of land as described in the foregoing make the aggregate area of two hundred acres (200).

Now know ye that the United States of America, in consideration of the premises and pursuant to the said acts of Congress have given and granted and by these presents do give and grant unto the said Central Pacific Railroad Company, and to its assigns, the tracts of land listed as aforesaid and described in the foregoing; yet excluding and excepting from the transfer by these presents "all mineral lands" should any such be found to exist in the tracts described in the foregoing, but this exclusion and exception according to the terms of the statutes "shall not be construed to exclude coal and iron lands."

To have and to hold said tracts with the appurtenances thereof unto the said Central Pacific Railroad Company, and to its successors and assigns forever.

In testimony whereof, I, William McKinley, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington this the twentieth day of January in the year of our Lord, one thousand and nine hun-

dred, and of the Independence of the United States the one hundred and twenty-fourth.

By the President:

WILLIAM McKINLEY.

[SEAL.]

F. M. McKEAN, *Secretary.*

C. H. BRUSH,
Recorder of the General Land Office.

Recorded in vol. 26, pages 201 to 203 inclusive.
Filed for record and recorded May 23, 1901, at 2.30 p. m.

70 PLAINTIFF'S EXHIBIT "B."

To all to whom these presents shall come:

The Central Pacific Railroad Company, a corporation, existing under the laws of the State of California, and of the United States, and the Metropolitan Trust Company of the City of New York, a corporation existing under the laws of the State of New York, trustee under the indenture of mortgage or deed of trust from the said Central Pacific Railroad Company to Charles Crocker and Silas W. Sanderson, trustees, dated 1st October 1870, and trustees under the indenture dated 4th September 1890, between the said Central Pacific Railroad Company, J. O. B. Gunn and William E. Brown, heretofore trustees under said indenture of mortgage or deed of trust of 1st October, 1870, and the Southern Pacific Company, in respect to the extension of bonds, secured by the said indenture of mortgage or deed of trust of 1st October, 1870, send greeting:

Whereas, in and by said indenture of mortgage or deed of trust of 1st October, 1870, it was provided that all of the lands therein conveyed and mortgaged should be under the sole and exclusive management and control of the said Central Pacific Railroad Company, with full power and authority in it to make contracts for the sale of the same, at such price, on such credit or terms of payment, and upon such other conditions as should be agreed to by the parties of the first and second part to the said indenture of mortgage or deed of trust, and as should seem to the said parties best calculated to secure a payment in full of all the bonds issued as therein provided, until entry or foreclosure by the trustees as therein provided.

And whereas, the said Central Pacific Railroad Company has contracted for the sale of the land hereinafter described to D. P. Tarpey, for the sum of seven hundred and sixty-nine (769) dollars, and such contract for the sale of said land, at the price and upon the credit or terms of payment and conditions contracted for, has been agreed to by the said Central Pacific Railroad Company and Metropolitan Trust Company of the City of New York, to which companies it has seemed best calculated to secure the payment in full of all the bonds issued, as in said indenture of mortgage or deed of trust provided:

And whereas the whole of the purchase-money of said land has been paid to the Metropolitan Trust Company of the City of New

York, in cash or in bonds secured by the said indenture of mortgage or deed of trust, or in overdue coupons.

Now therefore, in consideration of the premises, and the said sum of seven hundred and sixty-nine (769) dollars, the receipt whereof in cash, or in such bonds or coupons, is hereby acknowledged, the said Central Pacific Railroad Company and the said Metro-
71 politan Trust Company of the City of New York, trustee upon the trust expressed in the indenture hereinbefore mentioned, have granted, bargained, sold and conveyed, and hereby grant, bargain, sell and convey to the said D. P. Tarpey, and his heirs and assigns, the following-described tracts of land situate, lying and being in the counties of Weber and Box Elder, Territory of Utah, to wit:

Southeast quarter of southeast quarter (S. E. ¼ of S. E. ¼) of section twenty-seven (27) in township eight (8) north range two (2) west

according to the United States surveys, together with all the privileges and appurtenances thereunto appertaining and belonging, and reserving all claim of the United States to the same as mineral land.

To have and to hold the aforesaid premises to the said D. P. Tarpey, his heirs and assigns to his and their use and behoof forever.

In witness whereof, each of the parties hereto have caused these presents to be signed by its president or vice-president to be sealed with its corporate seal, and such seal to be attested by its secretary or assistant secretary, this seventeenth day of October, 1895.

ISAAC L. REQUA,
President C. P. R. R. Co.

[SEAL.]
Attest: W. M. THOMPSON,
Secretary C. P. R. R. Co.

Witness:
BENJ. F. TUTTLE.

CHAS. M. JESSUP,
2nd Vice-President Metropolitan Trust Co.

Attest: BEVERLY CHEW,
Secretary Metropolitan Trust Co.

Witness:
JOHN TELFORD.

72 STATE OF CALIFORNIA, }
City and County of San Francisco, } ss:

On this seventeenth day of October, 1895, before me, Benj. F. Tuttle, a commissioner of deeds for the Territory of Utah, to reside in the State of California, duly appointed, commissioned and qualified, and residing in the city and county of San Francisco, in the State of California, personally appeared Isaac L. Requa, personally known

to me to be the president of the Central Pacific Railroad Company, the corporation that executed the foregoing instrument, and to be the person who subscribed the same as such officer; and also personally appeared W. M. Thompson, personally known to me to be the secretary of the said corporation, and to be the person who subscribed the said instrument as such officer, and each acknowledged to me that the said corporation, and he as such officer thereof, executed the foregoing instrument freely and voluntarily, and for the uses and purposes therein mentioned. And I further certify that I know the seal affixed to the said instrument to be the corporate seal of the said corporation.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the city and county of San Francisco, the day and year in this certificate first above written.

[SEAL.] BENJ. F. TUTTLE,

A Commissioner of Deeds for the Territory of Utah, Residing in the City and County of San Francisco, State of California.

73 STATE OF NEW YORK, } ss:
City and County of New York, }

On this 30th day of October in the year eighteen hundred and ninety-five, before me, Joseph B. Braman, a commissioner of deeds for the Territory of Utah, in and for the State of New York, resident in said city of New York, personally appeared Charles M. Jessup and Beverly Chew, personally known to me to be the second vice-president and secretary, respectively, of the Metropolitan Trust Company, one of the corporations described in and that executed the within and annexed instrument, and they each acknowledged to me that such corporation executed the same. And the said Charles M. Jes-up and Beverly Chew, second vice-president and secretary respectively as aforesaid, being personally known to me to be such officers of said trust company, and the individuals described in and who executed said instrument as such officers of said trust company, each severally and personally then and there further acknowledged to me that the seal affixed to said instrument at the signature of said trust company is the corporate seal of said trust company, and that it was so affixed and attested, and said instrument executed by them in pursuance of the authority of the board of trustees of said trust company as the free and voluntary act and deed of said trust company and of themselves and each of them as its said respective officers freely and voluntarily, and for the uses and purposes therein mentioned and set forth.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate last above written.

JOSEPH B. BRAMAN,

Commissioner of Deeds for the Territory of Utah in and for the State of New York, Resident in said City of New York.

[SEAL.] *Offices: Equitable Building,* 120 *Broadway, also* 1274 *Broadway, New York City.*

Indorsed: Territory of Utah, County of Box Elder, ss. Filed for record and recorded November 27, 1895, at 11.15 a. m. in Book "P" of Deeds, page 558. Hyrum Standing, recorder.

74 PLAINTIFF'S EX. "C."

This indenture, made the twenty-eighth day of December, in the year of our Lord, one thousand eight hundred and ninety-five, between D. P. Tarpey and J. A. Tarpey, his wife, both of Salt Lake City, Utah, parties of the first part, and M. F. Tarpey of Alameda, California, the party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of ten dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do grant, bargain, sell and convey to the said M. F. Tarpey, and his heirs, and assigns, the folowing-described tracts of land, situate, lying and being in the county of Box Elder of Utah, to wit:

The southeast quarter of the southeast quarter of section 27, township 8 north of range 2 west Salt Lake meridian and base, according to the United States surveys, together with all the privileges and appurtenances thereunto appertaining and belonging, inclusing all homestead rights, reserving however, all claim of the United States to the same as mineral land. And the said J. A. Tarpey hereby covenants and agrees to and with the said party of the second part, that she has a perfect right to sell and relinquish her right of dower in the land aforesaid, and in consideration of the premises, and of the sum of one dollar to her in hand paid by the party of the second part, she has released, relinquished and conveyed, and by these presents does relinquish, release and convey unto the said party of the second part, his heirs and assigns forever, all rights or privileges of dower of, in or to said premises, and every part thereof.

To have and to hold the aforesaid prem-ses to the said M. F. Tarpey, his heirs and assigns, and to his and their use and behoof forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

D. P. TARPEY. [SEAL.]
J. A. TARPEY. [SEAL.]

Witness:
C. LOWE.

75 UNITED STATES OF AMERICA:

TERRITORY OF UTAH, }
County of Salt Lake, } ss:

Be it remembered that on the twenty-eighth day of December, 1895, before me C. Lowe, a notary public in and for the county of Salt Lake, personally appeared the within-named D. P. Tarpey and

J. A. Tarpey, his wife, whose names are subscribed to the annexed instrument, as parties thereto, personally known to me to be the parties described in, and who executed the annexed instrument, as parties thereto, who each of them acknowledged to me that they, each of them respectively executed the same freely and voluntarily, and for the uses and purposes therein mentioned, and that in signing and acknowledging the foregoing instrument they each thereby expressedly convey all homestead rights in and to the premises hereinbefore described.

And the said J. A. Tarpey, wife of the said D. P. Tarpey, having been by me first made acquainted with the contents of said instrument, acknowledged to me on examination, apart from and without the hearing of her husband, that she executed the same freely and voluntarily, without fear or compulsion, or undue influence of her husband, and that she does not wish to retract the execution of the same; and that in signing and acknowledging the annexed instrument, she thereby expressly conveys all her right of dower, and homestead right, in and to the premises hereinbefore in this instrument described.

In witness whereof, I have hereunto set my hand and affixed my notarial seal at my office in Salt Lake City the day and year first above written.

CLINTON LOWE,
Notary Public.

Indorsed: State of Utah, county of Box Elder. Filed for record and recorded September 4th, 1896, at 3.35 o'clock p. m., in Book "A" of Deeds, page 151. Hyrum Standing, county recorder.

76 PLAINTIFF'S EXHIBIT "D."

This indenture made this seventeenth day of October, in the year of our Lord one thousand eight hundred and ninety-six, between M. F. Tarpey, and E. M. Tarpey his wife, both of Alameda, California, parties of the first part, and the Toltec Ranch Company, a corporation, the party of the second part, *witnesseth:*

That the said parties of the first part, for and in consideration of the sum of ten dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do grant, bargain, sell and convey to the said Toltec Ranch Company, and its heirs and assigns, the following-described tract of land, situate, lying and being in the county of Box Elder, State of Utah, to wit: The southeast quarter of the southeast quarter of section twenty-seven, in township eight, north of range two, west, Salt Lake base and meridian, according to the United States surveys, together with all the privileges and appurtenances thereunto appertaining and belonging; including all homestead rights. Reserving however, all claims of the United States to the same as mineral land. And the said E. M. Tarpey hereby covenants and agrees to and with the said party of the second part, that she

has a perfect right to sell and relinquish her right of dower in the land aforesaid, and in consideration of the premises, and of the sum of one dollar to her in hand paid by the party of the second part, she has released, relinquished and conveyed, and by these presents does release, relinquish and convey, unto the said party of the second part, its heirs and assigns forever, all rights or privileges of dower, of, in or to said premises, and every part thereof.

To have and to hold the aforesaid premises to the said Toltec Ranch Company, its heirs and assigns, to its and their use and behoof forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

M. F. TARPEY. [SEAL.]
E. M. TARPEY. [SEAL.]

Witness:
E. H. THAUP.

77 UNITED STATES OF AMERICA:

STATE OF CALIFORNIA, } ss:
City and County of San Francisco, }

Be it remembered that on this seventeenth day of October, 1896, before me, E. H. Thaup, a notary public in and for the city and county of San Francisco, personally appeared the within-named M. F. Tarpey and E. M. Tarpey, his wife, whose names are subscribed to the annexed instrument, as parties thereto, personally known to me to be the same parties described in, and who executed the annexed instrument, as parties thereto, who each of them acknowledged to me that they, each of them respectively, executed the same freely and voluntarily, and for the uses and purposes therein mentioned, and that in signing and acknowledging the foregoing instrument they each thereby expressly convey all homestead rights in and to the premises hereinbefore described.

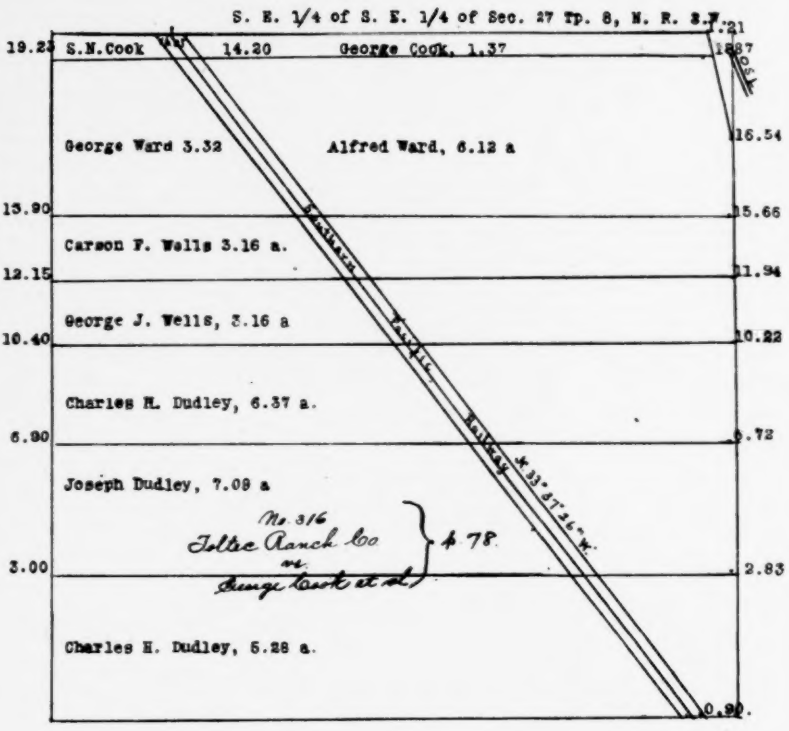
And the said E. M. Tarpey, wife of the said M. F. Tarpey having been by me first made acquainted with the contents of said instrument, acknowledged to me on examination, apart from and without the hearing of her husband, that she executed the same freely and voluntarily, without fear or compulsion, or undue influence of her husband, and that she does not wish to retract the execution of the same; and that in signing and acknowledging the annexed instrument, she thereby expressly conveys all her right of dower, and homestead right, in and to the premises hereinbefore in this instrument described.

In witness whereof, I have hereunto set my hand and affixed my notarial seal at my office in said city and county of San Francisco, the day and year first above written.

E. H. THAUP,
Notary Public.

[SEAL.]

Defendants Exhibit "1".



Endorsed: State of Utah, county of Box Elder, *ss.* Filed for record and recorded October 21, 1896, at 11.25 o'clock a. m. in Book "A" of Deeds, page 121. Hyrum Standing, county recorder.

(Here follows diagram marked p. 78.)

79 TERRITORY OF UTAH, } *ss:*
County of Box Elder, }

In the Probate Court in and for said County.

In the Matter of the Estate of GEO. J. WARD, Deceased.

Decree of Distribution of Estate.

Alfred Ward and T. W. Brewerton, administrators of the estate of Geo. W. Ward, deceased, having on the 24th day of May, A. D. 1884, filed in the court their petition setting forth among other matters, that all their account- have been finally settled and praying for an order of distribution of the residue of said estate among the persons entitled; and afterwards on the 24th day of May, 1884, by posting a copy in three public places in the county, there being no newspaper published in the county, of the order to show cause why distribution should not be made for ten days before the 9th day of June, 1884, as directed by this court, and as required by law, the hearing of said petition, and it duly appearing to the satisfaction of this court that such publication was completed at least 10 days before the day set for hearing said matter, and that the residue of said estate hereinafter described is now ready for distribution. That the whole of said property is common property.

That the said George W. Ward, died intestate in the city of Willard, county of Box Elder, on the 18th day of August, 1882, leaving him surviving 12 heirs, viz: the heirs of William Ward, deceased, Geo. Ward, Richard T. Ward, Alfred Ward, Moroni Ward, John J. Ward, Charles R. Ward, Mary Ann Ward Walker, Joseph W. Ward, and Hyrum H. Ward (the last minors) his only descendants; that the estimated expense of closing said estate will amount to the sum of thirty dollars; that the said twelve surviving heirs of said deceased are entitled each to $\frac{1}{2}$ of the residue of said estate.

Now on the said ninth day of June, A. D. 1884, on the petition of said administrators, and no exceptions or objections being filed or made by any person interested in the said estate or otherwise.

It is hereby ordered and adjudged and decreed, that all the acts and proceedings of said administrators as appearing upon the records thereof be and the same are hereby approved, and confirmed, and that after deducting said estimated expenses of closing the administration, the residue of said estate of Geo. W. Ward, deceased, hereinafter particularly described and now remaining in the hands of said administrators and any other property not now known or described which may belong to the said estate, or in which

the said estate may have any interest be and the same is hereby distributed as follows, to wit: Geo. Ward ½ interest in piece No. 1 of South farm Richard T. Ward, ½ interest in No. 1 piece of South farm. Alfred Ward ½ interest in No. 2 piece of South farm.
80 Moroni Ward ½ interest in No. 2 piece of South farm.
Approved:

P. F. MADSEN,
Probate Judge.

Filed June 9th, 1884.

A. H. SNOW, *Clerk.*
P. F. MADSEN, *Deputy.*

81 DEFENDANTS' EXHIBIT 2.

Quitclaim Deed.

Moroni Ward and Eliza V. Ward, his wife, grantors, of Washakie, Box Elder county, Utah, hereby quitclaim to Alfred Ward, grantee of Willard city, Box Elder county, for the sum of two hundred and fifty dollars, the following-described tract of land in Box Elder county, State of Utah, to wit: An undivided one-half interest in No. 2 piece of the South farm of Geo. W. Ward, deceased, as designated by the appraisers of said estate, containing eight and seventy-eight-hundredths (8.78/100) acres more or less, less the amount now owned by the U. P. R. R. Co. for right of way, being 21 rods wide and extending from the C. P. R. R. on the west to the east side of the old C. P. R'y grade on the east, being a part of the S. E. ¼ of sec. 27 and a part of the S. W. ¼ of sec. 26, T. 8 N. R. 2 W., Salt Lake meridian, together with the water rights belonging.

Witness the hand of the said grantors this ninth day of April, A. D. one thousand eight hundred and ninety-six.

MORONI WARD.
ELIZA V. WARD.

Signed in the presence of—
HYRUM STANDING.

STATE OF UTAH,
County of Box Elder, } *ss:*

On the 9th day of April, A. D. 1896, personally appeared before me Moroni Ward and Eliza V. Ward, his wife, the signers of the above instrument, who duly acknowledged to me that they executed the same.

[SEAL.]

HYRUM STANDING,
Recorder, Box Elder County.

Endorsed: Quitclaim deed. From Moroni Ward and Eliza V. Ward, his wife, to Alfred Ward.

82 DEFENDANTS' EXHIBIT 3.

Quitclaim Deed.

John D. Jones, grantor of Malad City, Oneida county, Idaho Territory, hereby quitclaims to George Cook and Samuel N. Cook (on the 4th day of April, A. D. 1882) grantees of Willard city, Box Elder county, Utah, for the sum of one hundred and fifty dollars, the following-described tract of land in Box Elder county, Utah Territory: Beginning at the northeast corner of the S. E. ¼ of the S. E. ¼ of section twenty-seven (27) township eight (8) north range two (2) west, Salt Lake meridian, running thence south four rods, and thirteen feet; thence west eighty rods (80); thence north four (4) rods and thirteen feet; thence east eighty (80) rods to place of beginning, and containing in all 2 64/100 acres more or less. This transfer was made on the 4th day of April A. D. 1882.

Witness the hand of the said grantor this 8th day of April, A. D. 1892.

JOHN D. JONES.

Signed in the presence of—
EDWARD MORGAN.

TERRITORY OF UTAH, } ss:
County of Box Elder, }

On the 8th day of April, A. D. 1892 personally appeared before me the undersigned mayor of Willard city, John D. Jones, the signer of the above instrument, who duly acknowledged to me that he executed the same.

PETER LOWE,
Mayor of Willard City.

Endorsed: Quitclaim deed. From John D. Jones to George Cook and Samuel N. Cook.

83 DEFENDANTS' EXHIBIT 4.

Quitclaim Deed.

Lyman B. Wells and Bithiah Wells, grantors of Willard city, Box Elder county, Utah Territory, hereby quitclaim to George J. Wells and Carson F. Wells, on the 5th day of April 1876, the transfer being made, grantees of Willard city, Box Elder county, Utah, for the sum of fifteen hundred dollars, the following-described tract of land, in Box Elder county, Utah Territory, beginning at a point twenty-six (26) rods 15½ feet south of the northeast corner of the south half of the southwest quarter of section twenty-six (26) township eight (8) north range 2 west, Salt Lake meridian; running thence west three hundred and twenty rods (320) *rods*, more or less to Great Salt lake; thence south fourteen (14) rods; thence east 320

rods; thence north 14 rods to place of beginning, being situated in the S. W. quarter of section twenty-six (26) and the S. E. quarter of section twenty-seven (27) and containing twenty-eight (28) acres more or less.

Witness the hand of the said grantors this 23rd day of November, A. D. 1891.

LYMAN B. WELLS.
BITHIAH WELLS.

Signed in presence of—
N. O. WELLS.
S. N. COOK.

TERRITORY OF UTAH, } ss:
County of Box Elder, }

On the 23rd day of November, 1891, personally appeared before me the undersigned, a justice of the peace for Box Elder county, Lyman B. Wells and Bithiah Wells, his wife, the signers of the above instrument, who duly acknowledged to me that they executed the same.

S. N. COOK,
Justice of the Peace.

84 DEFENDANTS' EXHIBIT 5.

Know all men by these presents, that we, Richard T. Ward, and Lizzie Ward, of Pottawattamie county, Iowa, in consideration of the sum of one hundred and fifty dollars in hand paid by George Ward of Box Elder county, Utah Territory, do hereby quitclaim unto the said George Ward, the following-described premises situated in Box Elder county, Territory of Utah, to wit: The undivided one-half of twenty rods wide bounded on the east by the C. P. railway and extending west to the Great Salt lake. Said land bounded on the south by Wells land claim, and on the north by the old John D. Jones claim, now occupied by Geo. Cook and son, and being a portion of the S. E. ¼ of the S. E. ¼ and also a portion of lot four (4) in section (27) twenty-seven, township eight (8) north of range (2) two, west, Salt Lake meridian, U. S. survey and containing seven acres more or less.

Witness our hands on this 30th day of April, 1885.

R. T. WARD.
LIZZIE WARD.

STATE OF IOWA, } ss:
Pottawattamie County, }

On this the 30th day of April, 1885, before me Henry Gittins, a justice of the peace, within and for the said county and State, personally came Richard T. Ward and Lizzie Ward, husband and wife, to me personally known to be the identical persons whose names are affixed to the above instrument as quitclaim grantors, and acknowledged the

execution of the same to be their voluntary act and deed for the purposes therein expressed.

Witness my hand officially on said date last above written.

HENRY GITTINS,
Justice of the Peace.

STATE OF IOWA, }
Pottawattamie County, } ss:

I, J. J. Shea, clerk of the district court in and for said county do hereby certify that Henry Gittins, before whom the annexed instrument was proven, was at the date thereof and now is an acting justice of the peace duly qualified to act as such; that under the laws of Iowa he is authorized to take acknowledgments and proof of deeds, administer oaths, etc.; that the annexed instrument is duly executed and acknowledged according to the laws of said State; that I am well acquainted with the signature of the said Henry Gittins, and believe *that* the one subscribed to the annexed instrument and purporting to be his, to be genuine.

In witness whereof, I have hereunto subscribed my name and affixed the seal of said district court at my office in Council Bluffs this 2nd day of May, A. D. 1885.

J. J. SHEA,
[SEAL.] *Clerk of the District Court.*

85 In the District Court of the First Judicial District, Box Elder County, State of Utah.

TOLTEC RANCH COMPANY, a Corporation, Plaintiff, *v.* GEORGE COOK ET AL., Defendants. } Notice of Intention to Move for New Trial.

Please take notice that the plaintiff intends to move the court to set aside and vacate the verdicts and decisions heretofore rendered herein, and to grant a new trial in this cause, upon the following grounds, viz:

1. Insufficiency of the evidence to justify the verdicts and decisions in favor of the defendants and against the plaintiff.
2. That said verdicts and decisions are against law.
3. On account of errors in law occurring at the trial and excepted to by the plaintiff.

This motion will be made upon the minutes of the court.

CHASE AND CHASE AND
T. D. JOHNSON,
Attorneys for Plaintiff.

To the above-named defendants, and their attorneys B. H. Jones and R. H. Jones.

Indorsed: Service of copy is hereby acknowledged this 21st day of May, 1901. Ricy H. Jones, B. H. Jones, attorneys for defendants.

Indorsed: Filed May 21st, 1901. Joseph Jensen, clerk, by C. C. Jensen, deputy.

86 In the District Court of the First Judicial District, Box Elder County, State of Utah, May Term.

Present: The Hon. Charles H. Hart, judge.

JULY 10, 1901.

TOLTEC RANCH COMPANY, a Corporation, Plaintiff,
vs.
GEORGE COOK ET AL., Defendants. } Order.

The motion of plaintiff for a new trial in the above-entitled action coming on regularly for hearing, and the same having been submitted to the court for decision, and now being fully advised in the premises, it is ordered, that the said motion for new trial be, and the same is denied.

CHARLES H. HART, *Judge.*

Entered in the minutes of the court.

87 In the District Court of the First Judicial District, Box Elder County, State of Utah, May Term.

Present: The Hon. Charles H. Hart, judge.

JULY 10, 1901.

TOLTEC RANCH COMPANY, a Corporation, Plaintiff,
vs.
GEORGE COOK ET AL., Defendants. } Order.

Good cause appearing therefore, it is hereby ordered and the plaintiff is hereby granted 15 days' additional time in which to prepare and serve its proposed bill of exceptions on the defendants, in the above-entitled cause.

CHAS. H. HART, *Judge.*

Entered in the minutes of the court.

88 Service of the foregoing original proposed bill of exceptions prepared and served by the plaintiff herein, is hereby acknowledged this the 24th day of August, 1901.

RICY H. JONES,
B. H. JONES,
Attorneys for the Defendants.

I hereby certify that the within and foregoing bill of exceptions is full, true and correct, and the cause is hereby settled and allowed as the bill of exceptions in said cause, and the same has been prepared, served, settled and allowed within the time allowed by law, and as extended by order of the court herein.

CHAS. H. HART, *Judge.*

Dated this 9th day of October, 1901.

89 In the District Court of the First Judicial District, Box Elder County, State of Utah.

TOLTEC RANCH COMPANY, a Corporation, Plaintiff,
vs.
GEORGE COOK, S. N. COOK, ALFRED WARD, GEORGE WARD, G. J. Wells, C. F. Wells, Joseph Dudley, and Charles Dudley, Defendants.

Notice of Appeal.

Please take notice that the plaintiff in the above-entitled action hereby appeals to the supreme court of the State of Utah, from the judgments therein entered in the said district court on the 23rd day of May, 1901 in favor of the said defendants and against the said plaintiff, and in which said cause plaintiff's motion for a new trial was denied on the 10th day of July, 1901, when said judgments became final, and from the whole thereof.

CHASE AND CHASE,
T. D. JOHNSON,
Attorneys for Plaintiff.

Dated Jan'y 8th, 1902.

To the said defendants and to B. H. Jones and R. H. Jones, their attorneys.

90 In the District Court of the First Judicial District, Box Elder County, State of Utah.

TOLTEC RANCH COMPANY, a Corporation, Plaintiff,
vs.
GEORGE COOK ET AL., Defendants.
Certificate.

I, Joseph Jensen, clerk of the district court of the State of Utah, in and for Box Elder county, do hereby certify that the above and foregoing is the judgment-roll in the above-entitled action, filed on the 23rd day of May, 1901; that the notice of intention to move for a new trial was made and entered upon the minutes of said court on the 10th day of July, 1901; that the notice of appeal of the plaintiff was filed on the eighth day of January, 1902, and that all of the foregoing are transmitted to the Supreme Court pursuant to said appeal, and I further certify that an undertaking on the part of the plaintiff in due form was filed on the eighth day of January, 1902.

[SEAL.] JOSEPH JENSEN, *Clerk.*

91 In the Supreme Court of the State of Utah.

TOLTEC RANCH COMPANY, a Corporation, Appellant,
v.
GEORGE COOK ET AL., Respondents.
} Petition in Error.

Your petitioner, The Toltec Ranch Company, a corporation, the plaintiff and appellant in the above-entitled cause, herewith files, in accordance with the statute in such case made and provided, this its petition in error, and attaches the same to the transcript on appeal, and respectfully petitions this honorable court to reverse the judgments and decision of the court below, and to that end your petitioner, the appellant, sets forth the following errors, and relies upon each and every of them, for a reversal of said cause:

1. The trial court erred in permitting the calling and empanneling of a jury, and the hearing and trial of this cause by a jury, over the objection of the plaintiff that said cause was an action in equity, and as such triable to the court.

(Trans. p. 59.)

2. The trial court erred in overruling the objection of the plaintiff to the question asked of the witness J. J. Ward, "Have Joseph Dudley and Charles Dudley been occupying any of this land?" and erred over the objection of plaintiff in permitting any testimony to be given proving or tending to prove any adverse claim or possession of or in the said defendants or either of them.

(Trans. p. 62.)

3. The trial court erred in overruling plaintiff's motion made when the defendants had rested their case, for judgment against the said defendants and each of them, on the grounds set forth in said motion; and the court erred in submitting to the jury any issues raised in the answers of said defendants; viz., whether they and each of them had acquired title by adverse possession.

(Trans. p. 76.)

92 4. The trial court erred in giving to the jury instructions number 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14, and each and every of said instructions, in that in so doing, it held that the defense of adverse possession could be made out in favor of the defendants and each of them, notwithstanding the evidence showed a patent by the United States had been issued no longer ago, that January, 1900, to the Central Pacific Railroad Company, the grantor of plaintiff's predecessors to and for said lands described in the complaint; and notwithstanding it nowhere appeared in the evidence when the lands in dispute had been surveyed by the United States Government.

(Trans. pp. 77–80, 81–83.)

5. The trial court erred in refusing to submit to the jury for answer by them, the special interrogatories requested by the plaintiff.

(Trans. p. 81.)

6. The trial court erred in entering judgment in favor of the defendants, and against the plaintiff, in that under the evidence in said cause, seven years had not expired since the date of the issuance of the patent by the United States to the Central Pacific Railroad Company, before the commencement of this action, and in that, the statute of limitations would not begin to run prior to the issuance of said patent.

(Trans. p. 60.)

7. The trial court erred in entering judgment in favor of the defendants and the plaintiff, in that it nowhere appears in the evidence when the land in controversy was surveyed by the United Ststes Government, and the statute of limitations would not begin to run against the plaintiff or its predecessors, in favor of the defendants or their predecessors until the same had been surveyed.

8. The trial court erred in submitting said cause to the jury, and erred in not peremptorily instructing them to return a verdict in favor of the plaintiff and against the defendants and each of them.

93 Upon the hearing of said cause in the supreme court of the State of Utah, the said appellant will rely upon each and every of the foregoing assignments of error for a reversal of said cause.

CHASE & CHASE,
T. D. JOHNSON,
Attorneys for Appellant.

94 In the Supreme Court of the State of Utah, Regular February Term.

FEBRUARY 20, 1902.

TOLTEC RANCH COMPANY, a Corporation, Appellant,
vs.
GEO. N. COOK ET AL., Respondents.
} Submission.

This cause coming on regularly to be heard was submitted upon briefs by counsel for the respective parties herein, and by the court taken under advisement.

Judgment.

Title of Court and Cause.

MARCH 18, 1902.

This cause having been heretofore submitted upon briefs by counsel for the respective parties, and the court being sufficiently advised thereon, it is now here considered, ordered, and adjudged, that the judgment of the court below be, and the same is hereby affirmed, with costs.

95 In the Supreme Court of the State of Utah.

TOLTEC RANCH COMPANY, a Corporation, Appellant,
vs.
GEORGE COOK ET AL., Respondents.

MINER, *C. J.:*

This action was brought to quiet title against several defendants having several interests in different pieces of land. The plaintiff prays for an injunction. The court treated the cases as having both legal and equitable issues.

Under objection the court proceeded with the trial of the case with a jury stating that if it appeared later in the trial that the case was simply an equitable proceeding, the jury might be considered as merely advisory. The jury found a verdict for each defendant as to each parcel of land, and, under instructions, brought in a special verdict in which separate special findings were made as to each defendant, all of which were in harmony with the general verdict and judgment. The court adopted the verdict and special findings of the jury, and rendered judgment thereon in favor of the several defendants.

We do not discover such irregularity in these proceedings as to warrant a reversal of the case.

96 In the case of Smith *v.* Richardson, 2 Utah 424, it was held by the territorial court that "The power to disregard or modify the findings of a jury in a chancery case is inherent in the court, the object of the verdict being not to decide the case, but to instruct or advise the conscience of the chancellor. And this rule is not of modern origin but is hoary with age and plainly laid down and recognized all through the books. 2 Dan. Pl. & Pr. sec. 1147; Adams Eq., side p. p. 376–377; 3 Greenl. Ev. sec. 261 *et seq.*; Siebert *v.* McAvoy, 15 Ill. 108; Ward *v.* Hill, 4 Gray, 593; Garsed *v.* Beall, 2 Otto, 684."

Also Stele *v.* Boley, 7 Utah 67; Park *v.* Wilkinson, 21 Utah 279; Stockmen *v.* Riverside, 64 Cal. 57; Comp. Laws, Utah, 1888, secs. 3128, 3511.

With reference to the rule allowing a cause of action to be tried against several defendants having separate interests, Mr. Pomeroy, says: "Fourth. Where the same party, A., has or claims to have some common right against a number of persons the establishment of which would regularly require a separate action brought by him against each of these persons, or brought by each of them against him, and instead thereof he might procure the whole to be determined in one suit brought by himself against all the adverse claimants as codefendants."

Pom. Eq. Jur. sec. 245.

The next question for consideration is whether the statute of limitations can prevail as a bar to the action when it appears that the patent of the U. S. Government was not issued to the plaintiff until January 20, 1900.

It is conceded by both parties, and we are of the opinion that the decision of this court in Toltec Ranch Co. *v.* Babcock, 66 Pac.
97 876, — Utah —, is decisive of this question.

The judgment of the district court is affirmed, with costs. It is so ordered.

We concur:
BASKIN, *J.*
BARTCH, *J.*

98 Filed Apr. 12, 1902. —— ——, Clerk Supreme Court, Utah.

In the Supreme Court of the State of Utah.

TOLTEC RANCH COMPANY, a Corporation, Plaintiff and Appellant,
vs.
GEORGE COOK, S. N. COOK, ALFRED WARD, GEORGE Ward, G. J. Wells, C. F. Wells, Joseph Dudley, and Charles Dudley, Defendants and Respondents.
} Application for Writ of Error.

Comes now the plaintiff and appellant, Toltec Ranch Company, a corporation, and says that in the final judgment rendered by the supreme court of the State of Utah, herein, on the — day of March, 1902, and in the proceedings had prior thereto certain errors were committed to the prejudice of said plaintiff, which will more in detail appear from the assignment of errors to be filed as a part of this petition, and further says that in the final judgment of the first judicial district court of Box Elder county, State of Utah, in this cause a decision was had against the validity of certain statutes of the Congress of the United States, and against the title of the plaintiff to certain lands situated in the State of Utah to which it claimed title under certain statutes of the United States—that is to say, the Pacific Railroad grants—and to which it claimed title under and by virtue of a patent to said lands having on the 20th day of January, 1900, been issued to its predecessor in interest by the Government of the United States—which said statutes and said patent were drawn in question by said litigation, the plaintiff claiming that the lands mentioned and described in said action were lands which were in the grant to the Central Pacific Railroad Company of California, and that under the terms of said grants and of the said patent the plaintiff was entitled to recover the possession thereof from the defendants in said action, and the defendants claiming and contending, that notwithstanding the said patent had issued within the period of seven years before the commencement of the said action,
that under the terms of the said grants of Congress to the
99 said railroad company, the said defendants could and had acquired title to said lands by adverse possession under the statutes of limitations of the State of Utah, against the said plaintiff and its predecessors in interest and grantors.

That the decision of the first judicial district court, wherein the said cause was tried, was against the validity and authority of the claim of plaintiff, and the decision of the supreme court was against the authority and validity of the claim of the plaintiff.

Wherefore, this plaintiff prays that a writ of error may issue in its behalf to the supreme court of the State of Utah for the correction of the errors so complained of, and that the transcript, papers, and records in this cause, together with the opinion of this honorable court herein, all duly authenticated, may be sent to the Supreme Court of the United States.

Dated April 2nd, 1902.

T. D. JOHNSON,
Attorney for Plaintiff, Toltec Ranch Company, a Corporation.

100 Filed Apr. 12, 1902. —— ——, Clerk Supreme Court, Utah.

In the Supreme Court of the State of Utah.

TOLTEC RANCH COMPANY, a Corporation, Plaintiff and Appellant, *vs.* GEORGE COOK, S. N. COOK, ALFRED WARD, George Ward, G. J. Wells, C. F. Wells, Joseph Dudley, and Charles Dudley, Defendants and Respondents.	Allowance of Writ of Error.

On this the 12th day of April, 1902, came the said Toltec Ranch Company, a corporation, plaintiff, by its attorney of record herein, T. D. Johnson, and filed and presented herein a petition praying for the allowance of a writ of error intended to be urged by it; praying also that a duly authenticated transcript of the record, proceedings, papers, and opinion upon which the judgment herein was rendered may be sent to the Supreme Court of the United States, and that such full and fair proceedings may be had as may be proper in the premises:

In consideration thereof I, James A. Miner, chief justice of the supreme court of the State of Utah, do hereby allow the writ of error upon the plaintiff giving bond according to law in the sum of five hundred dollars.

JAMES A. MINER,
Chief Justice.

101 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Utah, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a suit which — in the supreme court of the State of Utah, before you, being the highest court of law or equity of said

State in which a decision could be had in said State between The Toltec Ranch Company, a corporation, plaintiff, and George Cook, S. N. Cook, Alfred Ward, George Ward, G. J. Wells, C. F. Wells, Joseph Dudley and Charles Dudley, defendant, wherein was drawn in question construction of statutes of the Congress of the United States, and your decision was against the title specially set up and claimed to the real property in dispute in said action which the plaintiff claimed title to by virtue of land grants and of a patent from the United States to the plaintiff's predecessor in interest, which said land grants are evidenced by acts of Congress of the United States, and which said patent was executed by the President of the United States by virtue of the acts of Congress of the United States, and your decision was against the validity of said title specially set up and claimed under such statutes and patent and manifest error hath happened, to the great damage of the said Toltec Ranch Company, as by its complaint appears, we, being willing that error, if any hath happened should be duly corrected and full and speedy justice done to the parties in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within 60 days of the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court of the United States, this 12 day of April, in the year of our Lord one thousand nine hundred and two.

[Seal United States Circuit Court, District of Utah.]

JERROLD R. LETCHER,
Clerk U. S. Circuit Court, District of Utah.

Allowed by James A. Miner, chief justice of the supreme court of the State of Utah.

JAMES A. MINER,
Chief Justice.

Filed Apr. 12, 1902.

_____,
Clerk Supreme Court, Utah.

102 In the Supreme Court of the United States.

TOLTEC RANCH COMPANY, a Corporation, Plaintiff in Error,
vs.
GEORGE COOK, S. N. COOK, ALFRED WARD, GEORGE Ward, G. J. Wells, C. F. Wells, Joseph Dudley, and Charles Dudley, Defendants in Error. } Citation.

To George Cook, S. N. Cook, Alfred Ward, George Ward, G. J. Wells, C. F. Wells, Joseph Dudley, and Charles Dudley, defendants in error:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, in the District of Columbia, within 60 days of the date of this citation, pursuant to writ of error filed in the clerk's office of the supreme court of the State of Utah, at Salt Lake City, Utah, wherein The Toltec Ranch Company is plaintiff in error and you, the said George Cook, S. N. Cook, Alfred Ward, George Ward, G. J. Wells, C. F. Wells, Joseph Dudley and Charles Dudley are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this the 12th day of April, A. D. 1902.

JAMES A. MINER,
Chief Justice of the Supreme Court of the State of Utah.

I hereby acknowledge due and legal service of the foregoing citation, this the 14 day of April, A. D. 1902.

RICY H. JONES &
B. H. JONES,
Attorneys of Record for the Defendants in Error, George Cook, S. N. Cook, Alfred Ward, George Ward, G. J. Wells, C. F. Wells, Joseph Dudley, and Charles Dudley.

103 Filed Apr. 12, 1902. —— ——, Clerk Supreme Court, Utah.

In the Supreme Court of the State of Utah.

TOLTEC RANCH COMPANY, a Corporation, Plaintiff and Appellant,
vs.
GEORGE COOK, S. N. COOK, ALFRED WARD, George Ward, G. J. Wells, C. F. Wells, Joseph Dudley, and Charles Dudley, Defendants and Respondents. } Assignments of Error.

Comes now the plaintiff, Toltec Ranch Company, a corporation, and makes its assignments of error, as follows:

1. The court erred in affirming the judgment of the trial court.

2. The court erred in holding that such title in the land in dispute passed to the Central Pacific Railroad Company of California from the United States of America under the acts of July 1, 1862, and July 2, 1864, said acts being found and printed in volume 12 of the United States Statutes, pages 289 and following, and volume 13 of the United States Statutes, on page 356 and following respectively; that the said defendants could and had acquired title thereto against the plaintiff and its predecessors in interest by adverse possession under the statute of limitations of the Territory and State of Utah, said statute of limitations being found and printed in volume 2 of the Compiled Laws of 1888 of the Territory of Utah at page 220 and following, and found and printed in the Revised Statutes of the State of Utah at page 634 and following respectively.

3. The court erred in holding and deciding that the said defendants could and had acquired title to the said lands in dispute by adverse possessiou under the said statute of limitations by an adverse holding of said lands prior to the 20th day of January, 1900, the date of the patent to the Central Pacific Railroad Company from the United States.

4. The court erred in holding and deciding that the said defendant could and had acquired title to the said lands by adverse possession under the said statutes of limitations without proof
104 of the date of the survey of the lands in dispute by the United States.

Dated April 2, 1902.

T. D. JOHNSON,
Attorney for the Plaintiff, Toltec Ranch Company, a Corporation.

105 In the Supreme Court of the State of Utah.

TOLTEC RANCH COMPANY, a Corporation, Appellant,
vs.
GEORGE COOK, P. N. COOK, ALFRED WARD, GEORGE WARD, G. J. WELLS, C. G. WELLS, Joseph Dudley, and Charles Dudley, Defendants and Respondents.

Bond.

Know all men by these presents, that we, The Toltec Ranch Company, a corporation, as principal, and James McTerney and William Keyting, as sureties, are held and firmly — unto George Cook, S. N. Cook, Alfred Ward, George Ward, G. J. Wells, C. F. Wells, Joseph Dudley and Charles Dudley, defendants and respondents, in the full and just sum of five hundred dollars, to be paid to said respondents, their heirs and assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally by these presents.

Sealed with our seals, and dated this the 7th day of April, 1902.

Whereas, lately, in the supreme court of the State of Utah, in the suit depending in said court between said plaintiff The Toltec Ranch Company, a corporation, and the said defendants, George Cook, S. N. Cook, Alfred Ward, George Ward, G. J. Wells, C. F. Wells, Joseph Dudley and Charles Dudley, a judgment was rendered against the said plaintiff, Toltec Ranch Company, and it, the said Toltec Ranch Company, plaintiff, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to said George Cook, S. N. Cook, Alfred Ward, George Ward, G. J. Wells, C. F. Wells, Joseph Dudley and Charles Dudley, citing and directing them to be and appear at a term of the Supreme Court of the United States, holden at *a term of the Supreme Court of the United States, holden at* the seat of government at Washington, within 60 days of the date of said citation.

Now, the condition of the above obligation is such, that if the said Toltec Ranch Company shall prosecute said writ of error to effect, and answer all damages and costs, if it fails to make the plea
106 good, then the obligation to be void, else to remain in full force and virtue.

TOLTEC RANCH CO.,
By D. P. TARPEY, *Manager.*
JAMES McTERNEY. [SEAL.]
WM. KEYTING. [SEAL.]

Signed, sealed and delivered in the presence of—
JOSIAH THOMAS.

STATE OF UTAH,
County of Salt Lake, } ss:

James McTerney and William Keyting, each being severally duly sworn, each for himself on oath says: That he is a resident and householder in said county and State; that he is worth the sum mentioned in the foregoing bond as the penalty thereof over and above all his just debts and liabilities, exclusive of property exempt from execution.

JAMES McTERNEY.
WM. KEYTING.

Subscribed and sworn to before me this 7th day of April, 1902.
[SEAL.] JOSIAH THOMAS,
Notary Public.

Approved by James A. Miner, chief justice of the supreme court of the State of Utah.

JAMES A. MINER,
Chief Justice.

107 UNITED STATES OF AMERICA:

STATE OF UTAH,
County of Salt Lake, } ss:

I, Lilburn P. Palmer, clerk of the supreme court of the State of Utah, pursuant to a writ of error allowed in the case wherein The Toltec Ranch Company, a corporation, is plaintiff in error, and George Cook *et al.*, are defendants in error, do herewith return attached hereto a transcript of the proceedings had in said cause, with a copy of the judgment and opinion of said court, and the bond given in pursuance of the allowance of said writ of error, together with the original order granting said writ of error, the writ of error, citation, and assignments of error.

And I further certify that said transcript of the record and proceedings had in said cause, contains a full, true and correct copy of the several originals now on file and of record in my office.

Seal State of Utah Supreme Court, Jan. 4, 1896.

In witness whereof, I hereunto set my hand and affix the seal of said supreme court of the State of Utah, this the 31st day of March, A. D. 1902.

LILBURN P. PALMER, *Clerk.*

Endorsed on cover: File No. 18,515. Utah supreme court. Term No. 316. Toltec Ranch Company, plaintiff in error, *vs.* George Cook, S. N. Cook, Alfred Ward, George Ward, G. J. Wells, C. F. Wells, Joseph Dudley, & Charles Dudley. Filed April 25", 1902.